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CONSTITUTIONAL CONVENTION
OF THE
STATE OF MARYLAND

Chamber of the House of Delegates
State Capitol
Annapolis, Maryland
November 28, 1967 - 10:05 a.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

Reported by:
Dorothy Fitzgerald

P R O C E E D I N G S

1
2 THE PRESIDENT: The Sergeant-at-Arms will
3 clear the aisles and close the door.

4 The Convention will please come to order.

5 The invocation today will be offered by the
6 Reverend Nicholas Dohoney of St. Paul's Catholic Church
7 in Ellicott City. Dr. Dohoney.

8 DR. DOHONEY: Our help is in the name of the
9 Lord, who hath made heaven and earth. Oh, Lord, hear my
10 prayer and let my cry come unto Thee.

11 Let us pray:

12 Direct O Lord, we ask you, all the actions
13 of this assemblage by your inspiration and carry them on
14 by your assistance, that that which is to be effected
15 here may always begin from you, and through you be
16 brought to completion; that the results of this convention
17 may tend to the preservation of peace, the promotion of
18 happiness, the increase of industry, sobriety and useful
19 knowledge; and may perpetuate to us the blessings of
20 equal libert. Through thy divine providence. Amen.

21 THE PRESIDENT: Roll Call.

1 (The roll was called.)

2 THE PRESIDENT: Has every delegate answered
3 roll call? The Clerk will record the roll call.

4 The Chair recognizes Delegate Powers,
5 Chairman of the Committee on Calendar and Agenda.

6 DELEGATE POWERS: Mr. President, in view
7 of the fact that today's calendar and agenda went to
8 the printer about 4:00 yesterday afternoon, I would like
9 to move to amend the calendar so as to provide that we
10 resume consideration of Committee Report Number EB-1
11 and that the debate schedule Number 5 reflect the
12 change that was made yesterday afternoon in that Item
13 1 would be deferred until after Items 2 and 3 were
14 concluded. That is to say, we would conclude the con-
15 sideration of the Comptroller and Treasurer, both of
16 whom would be involved in the Board of Public Works,
17 before we resume consideration of the Board of Public
18 Works.

19 With that change, I move that the Calendar
20 be adopted.

21 THE PRESIDENT: Is there a second?

1 (The motion was seconded.)

2 THE PRESIDENT: All in favor of the motion
3 to adopt the Calendar, -- Delegate Kiefer.

4 DELEGATE KIEFER: Can there be any discussion
5 on this, Mr. President?

6 THE PRESIDENT: Yes.

7 DELEGATE KIEFER: I find myself, sir, in a
8 very unhappy position and I think that I speak for a
9 great many people in this Convention. Looking over
10 the situation in the last day or so, sir, I find that
11 people with whom I have a great deal in common, a great
12 deal of admiration and respect, like Governor Tawes,
13 Judge Shaw, Judge Sherbow, Judge Dorsey, Judge Sybert,
14 Senator Della, Delegate Malkus, Delegate Hostetter and
15 many others, I admire these people and yet, sir, I face
16 a situation that I think a lot of people do, a certain
17 amount of confusion. This is why I rise at this time in
18 connection with this amendment to the Agenda.

19 There is a basic problem that is basic to
20 this Convention, I think, sir, and that is the problem
21 that is first of all one of tradition, the upsetting

1 completely of certain Maryland concepts in the election
2 of attorney generals, comptrollers, treasurers and so
3 forth, and also in connection with the Board of Public
4 Works. These are things that have long been traditional
5 in our Government.

6 At the same time, sir, there is a very basic
7 fundamental concept which goes even deeper and stronger
8 which applies to this state, to every state and the nation,
9 and that is the complete separation of powers into
10 executive, legislative and judicial.

11 This is a concept that ought not to be
12 marred and we know that. I think Judge Childs has
13 argued strongly for that in personal rights and preambles.
14 I think it has been brought out in general provisions.

15 The point I wish to make is this. It seems to
16 me if we can carry on with this debate at this point,
17 we are in a position where a strong group feeling one
18 way may win out by a few votes over a strong group that
19 may feel the other way when basically I don't think
20 there is a real disagreement or real separation.

21 I think we want to do what is best for the

1 State of Maryland and I am wondering, sir, if it isn't
2 possible to work out a plan, a scheme that would satisfy
3 all the people, not a compromise.

4 I found in the Committee of Personal Rights
5 and Preamble where we have had some pretty controversial
6 subjects, after debate on all sides, we have reached
7 a decision almost unanimously on basic issues, because
8 this was not a compromise but a realization that a
9 solution is possible.

10 I am wondering if some kind of a select
11 committee could be appointed to see if they could not
12 work out a framework here which would establish what we
13 want to do with the separation of these powers and at
14 the same time to provide for the basic traditional offi-
15 ces for which we all have a lot of regard.

16 I don't want to do Bill Goldstein out of a
17 job or Bill Birch. It seems we would all feel more
18 comfortable or more happy if we could work out some kind
19 of a solution or some kind of a way in which we could
20 bring this Convention to see eye to eye all of us to-
21 gether, in a method that would establish the basic concepts

1 of Government so long a tradition in this country and
2 at the same time establish a workable arrangement for the
3 Attorney General, Comptroller and Board of Public Works.

4 Therefore, if it is in order, I would like
5 to move that some of this be delayed and that the
6 Chair appoint some kind of a select committee to work
7 with the Committee on the Executive Branch and see if
8 some kind of a program could not be developed which would
9 be helpful to all of us.

10 THE PRESIDENT: I think the Chair ought to
11 make a statement with respect to the suggestion of
12 Delegate Kiefer. I don't think that there is the
13 slightest question but that the problem now confronting
14 the Convention is one of very great importance and could
15 be very divisible.

16 To that end, as I think every delegate in
17 the Convention knows, the Chair tried very hard in the
18 course of the past week and particularly from Wednesday
19 of last week on, to work out a compromise that would be
20 satisfactory to everyone on the Executive Branch.

21 At one point it appeared as though this could

1 be accomplished. The committee met for a long time
2 yesterday and the final conclusion was that they were
3 unable to reach agreement. This is a matter which has
4 been before the Committee on the Executive Branch prac-
5 tically since the beginning of the Convention. They
6 have wrestled with it certainly constantly.

7 I do not believe that the Convention can
8 possibly remove the question from consideration by that
9 committee and refer it to another select committee
10 to consider it and report back to the Convention.

11 It seems to me that the only way we can possibly
12 make progress on the matter is to proceed in the way we
13 are. If the Committee has been unable to reach agree-
14 ment, then we will have to reach agreement in some way
15 on the floor. At least that is the way it seems to the
16 Chair.

17 Is there any other comment? I would
18 be very happy if it could work out otherwise, but I do
19 not seem to be able to do it.

20 The motion is to adopt -- Delegate Sherbow.

21 DELEGATE SHERBOW: Mr. President, I only want

1 to make this comment, I doubt if it would be reached
2 but it is on the agenda. The matters before the State
3 Finance and Tax Action Committee. In my discussion with
4 Delegate Powers we had assumed it would not be reached
5 until Wednesday or Thursday of this week. We can get
6 ready if everything else suddenly went through like I
7 don't think we may --

8 THE PRESIDENT: That is why it is on the agenda.
9 Sometimes those things do happen. We might be fortunate
10 and come to a quick agreement.

11 DELEGATE SHERBOW: If that is so, we might ask
12 for a short recess in order to put things together.

13 THE PRESIDENT: Delegate Borom.

14 DELEGATE BOROM: If it would help solve the
15 problem, general provisions could be brought up on very
16 short notice. We could take up the slack if Judge Sherbow
17 isn't ready.

18 THE PRESIDENT: Any further discussion? The
19 question arises to amend the Calendar and adopt the
20 Calendar as amended. All in favor signify by saying Aye;
21 contrary, No. The Ayes have it, and it is so ordered.

1 THE PRESIDENT: The Chair recognizes Delegate
2 Cardin for the purpose of making an announcement.

3 DELEGATE CARDIN: Mr. President and fellow
4 delegates, it is with pleasure that I announce that
5 we have here today in the rear gallery 68 students of the
6 Pikesville Junior High School 9th Grade accompanied by
7 their teachers, Mr. Wessells and Mr. Nord; my close friend
8 and confidant, Mrs. Joseph Luskins.

9 I hope we will give them a cordial welcome
10 and that they enjoy our deliberations. (Applause.)

11 THE PRESIDENT: Delighted to have them.

12 The Chair also takes pleasure in recognizing
13 the presence in the gallery of the Honorable Bertha S.
14 Adkins, former Under Secretary of the Department of Health,
15 Education and Welfare, of the United States, and Miss
16 Sarah Adkins, respectively cousin and sister of Delegate
17 Dale Adkins.

18 We are delighted to have both of them here
19 today.

20 Delegate Bard has asked me to call your
21 attention to the fact that he has a young niece and nephew,

1 Kitty and Cain Bard in the gallery observing his actions
2 today. (Applause.)

3 Are there any motions or resolutions?

4 The Chair recognizes Delegate Powers.

5 DELEGATE POWERS: Mr. President, I move the
6 Convention resolve itself into a Committee of the Whole
7 to resume consideration of the orders of the day.

8 THE PRESIDENT: Is there a second?

9 (The motion was seconded.)

10 THE PRESIDENT: All in favor signify by saying
11 Aye; contrary, No. The Ayes have it, and it is so
12 ordered.

13 (Whereupon, at 10:20 a.m. the Convention
14 resolved itself into the Committee of the Whole.)

15 (The mace was removed by the Sergeant at Arms.)

16 THE CHAIRMAN: The Committee will please come
17 to order. We will resume debate on EB-1.

18 We now have under consideration Recommendation
19 2, there is a motion before us to amend Recommendation 2
20 to strike the word "not" in line 18. There is 20 minutes
21 of controlled debate, controlled by Delegate Sybert, 20

1 minutes controlled by Delegate Morgan and 20 minutes of
2 uncontrolled but limited debate.

3 The Chair recognizes Delegate Sybert.

4 DELEGATE SYBERT: Mr. Chairman, I yield three
5 minutes to Delegate Buzzell.

6 THE CHAIRMAN: Delegate Buzzell.

7 DELEGATE BUZZELL: Mr. Chairman, fellow dele-
8 gates. I believe that the issue before us has been
9 already adequately presented by the distinguished and
10 able Vice-Chairman of the Committee on the Executive
11 Branch and the other speakers in support of the report
12 of the majority of the committee and also the position
13 of the minority has been presented with equal clarity
14 by Delegate Sybert.

15 I certainly have no desire to extend this
16 debate. I know only that as a member of the Committee
17 on the Executive Branch, I listened to the same testimony,
18 participated in the same discussion of the committee
19 and yet reached exactly the opposite conclusion as did
20 the first nine other members of that committee and
21 finally myself and eight other members of the committee,--

1 for I have reached the conclusion that the general
2 management of the fiscal affairs of the state can best
3 be performed by this Constitutional elective Comptroller
4 directly responsible to the electorate, so I shall vote
5 in support of the motion of the minority portion of this
6 committee, but I shall vote for this amendment also for
7 another possibly more important reason.

8 I know that the people whom I was elected to
9 represent in this Convention are strongly opposed to the
10 elimination of the Constitutional Office of Comptroller
11 as an elective executive.

12 In recognition of their wishes, I shall vote
13 in favor of the motion. Thank you.

14 THE CHAIRMAN: Delegate Morgan.

15 DELEGATE MORGAN: Mr. Chairman, the Vice-
16 Chairman of the Committee is in control of the time
17 on this matter.

18 THE CHAIRMAN: Very well; Delegate Adkins.

19 DELEGATE ADKINS: Mr. Chairman, I recognize
20 Delegate Boyce for five minutes.

21 THE CHAIRMAN: Delegate Boyce.

1 DELEGATE BOYCE: Mr. Chairman and fellow
2 delegates, no matter what decision we make in regard to
3 the majority report as far as the comptroller being in
4 the Constitution or the minority report, not being in the
5 Constitution, or the minority report keeping him in, we
6 are all taking one step in the direction of strengthening
7 the governor of this state.

8 Face it, because the minority report brings
9 out a new idea, a five-man board, two of which are
10 appointed by the governor, he sits on the Board, and two
11 others, so in normal times he would have a three to
12 two vote any time he needed it and this is strengthening
13 the hand of the governor.

14 Now, the question comes as to how far do we
15 wish to strengthen the hand of the governor. Those who
16 are scared to go too far use three arguments against
17 him. The first they say and rather ridiculously, is that
18 this is going to create a dictatorship in Maryland.

19 We know right well the limitations on term.
20 We know right well advise and consent, and we know right
21 well that the detailed power of the legislature is enough

1 to keep dictatorship out of Maryland. That argument
2 holds no water.

3 We then have the argument that we heard a few
4 minutes ago that we know what the people think. We
5 have no conception what they think. Our job is to
6 come down here and write the best Constitution we can
7 and then go back to the people and explain how and why
8 we did it, and to work with them and try to get them to
9 support a Constitution.

10 No one can give me the logical reasoning
11 why Kentucky's Constitution was turned down and why
12 Connecticut's was approved. We have to go out and work
13 for this and each and every one of us know it.

14 Now, the instruction is here among the
15 delegates that are not going to work for it, that they
16 are going to keep saying that the people don't want it.
17 Let us say we can elect or we can build a Constitution
18 that we will support. That we have to see it clearly and
19 we have to substantiate what we do.

20 Delegate Sybert in his talk used one
21 newspaper to say what he thought the Comptroller should

1 be is important. He quoted the Baltimore News Post. But
2 I would like to point out to him that the Baltimore
3 Sun and Washington Post and Star have all adopted the
4 attitude that the Comptroller should not be a Constitu-
5 tional office and it should be appointed.

6 We can go further than this. We can move to the
7 oldest **thoroughly** knowledgeable outfit in the
8 United States concerning state government, the National
9 Municipal League, and they have been in office since the
10 turn of the Century. They have been working with state
11 after state.

12 I would like to read to you one quote in one
13 of their pamphlets that I think is so appropriate for
14 what we are discussing here. We can use this with the
15 people because this is what we should be saying:" The
16 greatest single impediment to executive unity lies in the
17 Constitutional designation of top officials who obtain of-
18 fice by popular election or by legislative election."

19 This is our answer; but then I think we must
20 go further. Why has this gotten to be such an emotional
21 situation? I felt that I really wanted to speak toward

1 the Board of Public Works but having run for the office of
2 Comptroller, I thought it was only fair that I stand on
3 the floor and say to you what I said all last summer
4 a year ago, I was running for an elective office which
5 should be appointive. I think that is for the good of
6 the state of Maryland.

7 Let me say circumstances have not changed
8 that situation nor would they had I been so fortunate to
9 be the present comptroller. But somehow or another the
10 present comptroller thinks he is changing circumstances
11 and that he can twist people's wrists and he can threaten
12 and reward.

13 I think this Machiavellian technique belongs
14 a long time ago and not in the 20th Century, and not
15 for the people who are desperately working hard to
16 write a Constitution that will run into the 21st Century.

17 Let me close with one quote Mr. Chief Justice
18 Cardoza said: "We are not making rules for the passing
19 hour, but we are making principals for an expanding
20 future."

21 THE CHAIRMAN: Delegate Sybert, do you wish to

1 allot some time?

2 DELEGATE SYBERT: Mr. Chairman, I would like
3 to allot two minutes to Delegate Armor.

4 THE CHAIRMAN: Delegate Armor.

5 DELEGATE ARMOR: Mr. Chairman and fellow
6 delegates of the Constitutional Convention, I am in
7 favor of retaining the comptroller in the new Constitution;
8 election of the comptroller has worked well for a long
9 continuous period of years. It is desirable that this
10 important official should have Constitutional status
11 and that he should be elected by the people; holding
12 this office by direct action of the electorate and for a
13 fixed term by the Constitution makes for the independence
14 of this official of the state of Maryland.

15 This provision in the present Constitution
16 should be continued. In the words of the very fine
17 temperate gentleman, an Ambassador of good will, the
18 words "God bless you all real good".

19 THE CHAIRMAN: Delegate Adkins.

20 DELEGATE ADKINS: Mr. Chairman, I yield three
21 minutes to Delegate Winslow.

1 THE CHAIRMAN: Delegate Winslow.

2 DELEGATE WINSLOW: Mr. Chairman, and fellow
3 delegates, yesterday in the question period, or
4 last evening, we heard reference to the political philoso-
5 phies of Thomas Jefferson and Alexander Hamilton. We have
6 come to respect these two judges as founders of this
7 nation and as exponents of two distinct political
8 philosophies.

9 However, may I point out that as I recall,
10 Thomas Jefferson was elected President in 1800, that he
11 served as a strong executive, that at no time did he
12 suggest that the Constitution be amended so as to provide
13 a plural executive, nor even that Congress, which was largely
14 under his control, should create an independent fiscal officer
15 to share his powers and responsibilities.

16 I suggest, ladies and gentlemen, that the
17 actions of a strong executive Thomas Jefferson, the first
18 of a long line of strong executives, including Andrew
19 Jackson, Abraham Lincoln, Theodore Roosevelt, Woodrow
20 Wilson, and Franklin D. Roosevelt, speak

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1 louder than his words.

2 In point of fact, I know of no place in the
3 writings of Thomas Jefferson where he ever suggested
4 that there should be a plural executive. The executive
5 power we heard yesterday several times should be vested
6 in the government and we should take care that the laws
7 be faithfully executed.

8 How can you vest the power, the executive
9 power in the government and then divide that power among
10 two or three executives? A plural executive is rarely
11 very effective. We heard it yesterday, we have heard
12 for many days about checks and balances in the government.
13 It is an old and respected tenant of American political
14 theory, but the checks and balance system was never
15 intended --

16 DELEGATE CLARK: Delegate Winslow, you have
17 30 seconds.

18 DELEGATE WINSLOW: It was intended to prevent
19 one branch of government from prevailing over another
20 branch. It was never intended to provide an overriding
21 of the head of a branch of government by someone within

1 this branch.

2 What we need in the fiscal affairs of this
3 state, it would seem to me, is something like the
4 United States Comptroller General who would be responsible
5 to the legislature and a fiscal officer who would be
6 responsible to the legislature and a fiscal officer who
7 would be responsible to the governor.

8 DELEGATE CLARK: The Chair recognizes Delegate
9 Sybert.

10 DELEGATE SYBERT: I should like to yield three
11 minutes to Delegate Finch.

12 DELEGATE CLARK: The Chair recognizes Delegate
13 Finch.

14 DELEGATE FINCH: Mr. Chairman and fellow
15 delegates, traditionally there are three branches of
16 government, executive, legislative and judicial. As
17 the affairs of government, particularly local government,
18 become more complex, it becomes more imperative that
19 certain phases of governmental function be entirely
20 separate and free of partisan control.

21 One phase of government which separates

1 readily from the other functions is the highly specialized
2 area of finance. The establishment of this vital and
3 divisible function as a separate branch of the Government
4 system would be recognition of the need for specialized,
5 non-partisan control of the growth of the prosperity of
6 our state purse.

7 Considering then the financial affairs of
8 the state, which would be under the auspices of the
9 Office of the Comptroller -- these matters are as technical
10 and complex as they are crucial and they should, from
11 necessity, be managed by professionals of the highest
12 expertise and competency, unfettered by Executive or
13 partisan control of the pursestrings beyond the apportion-
14 ment level.

15 It is not suggested that any of the presently
16 created branches, executive, legislative or judicial,
17 would suffer from the creation of this separate office.
18 The legislature will still legislate and control the
19 overall budget and various apportionments; the Governor
20 will remain the political chieftan and foremost individual
21 policy maker of the state: the Judiciary will still

1 preside over the realm of law through case decisions.
2 Under this office of comptroller in the Constitution as
3 an elective office, the other branches will be free of
4 great technical burdens which tend to be somewhat abused
5 when lumped in with the many other various functions of
6 this already independent office.

7 As to the method of selecting the proper
8 officer to head this branch of local government, it is
9 conducive to the independent functioning of this office,
10 that this officer, the comptroller, be elected to serve
11 through the general election route. If this office is
12 to be appointive, who would do the appointing? The
13 Governor? If the Governor holds the power of appointment
14 and/or dismissal over this office, the Governor would,
15 likewise, hold an overriding measure of control over
16 this supposedly independent branch of Government.

17 However, if a separate finance branch is
18 headed by an elected officer, then this office will be
19 controlled and managed by an official directly responsible
20 to the people. The Comptroller will "run on his record".
21 This is as it should be insofar as heads of major

1 branches of government are responsible and responsive
2 directly to the will of the people.

3 Thank you.

4 DELEGATE CLARK: The Chair recognizes Delegate
5 Adkins.

6 DELEGATE ADKINS: Mr. Chairman, I yield three
7 minutes of the majority time to Delegate Marvin Smith.

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1 DELEGATE CLARK: Delegate Marvin Smith.

2 DELEGATE SMITH: Let me say at the outset
3 that the present Comptroller and Treasurer of Maryland is
4 my good friend from college days when he was Treasurer
5 of every organization on the college campus, and I talked
6 with him as recently as Saturday night; and I promised my-
7 self when I came over here that I was going to do my best
8 to act in accordance with what I conceive to be in the
9 best interests of the people of the State of Maryland, and
10 not on the basis of some personal friendships.

11 Now, Delegate Finch has in effect said that we
12 should have four branches of government, the legislative,
13 the judicial, and one part executive, which administers
14 the law and another that collects the money.

15 This is a new concept. Let me point out two
16 things to you, sir:

17 (1) Basically and fundamentally the Comptroller
18 of the Treasury of Maryland has not been selected by the
19 people of Maryland. Now, go back and check it out. I
20 looked this morning at the Maryland Manual, It must have
21 gone from 1919 on, with the possible exception of 1938 --

1 and I am not knowledgeable enough with reference to that
2 particular election to know how people lined up -- but moving
3 from 1919 on, the Comptroller of the Treasury of Maryland
4 has been hand-picked by the establishment in this State,
5 despite the fact that in a number of recent years the
6 person who has been elected Comptroller has not been
7 of the same party or of the same faction as all of the group
8 that ultimately ended up with the nomination or the elec-
9 tion insofar as Governor is concerned.

10 Now, the duties are ministerial, and if you
11 will examine section 2 of Article VI of the present Mary-
12 land Constitution you will find that the duties set down
13 here are ministerial, preparing ~~reports~~ estimates of revenue
14 to adjust and settle on terms prescribed by law with de-
15 linquent collectors and so forth.

16 I submit to you, Mr. Chairman, that it is the
17 duty and the responsibility of the executive to
18 be responsible to the people of Maryland on such things as
19 this.

20 DELEGATE CLARK: You have 30 seconds.

21 DELEGATE M. SMITH: I would go one step further

1 and point out to you that even in this matter of indepen-
2 dence, the Comptroller has failed. I would point out to
3 you two counties, side by side, with relatively similar
4 population, clerk's offices with approximately the same
5 income, one ending up with a \$6,000 profit, the other a
6 \$900 loss.

7 DELEGATE CLARK: Your time is up, sir.

8 Delegate Sybert.

9 DELEGATE SYBERT: Mr. Chairman, I thank the
10 last speaker, Delegate Smith, for pointing out that the
11 present Comptroller began, even in college, in his tender
12 years, to train himself as fiscal officer by building
13 the treasury of that building committee. I now yield three
14 minutes to Delegate Catherine Robie.

15 DELEGATE ROBIE: Mr. Chairman and fellow dele-
16 gates:

17 I would like to ask your support to retain
18 the Comptroller and Attorney General as elective officers.
19 I hate to disagree with Delegate Boyce when he said that
20 the people don't know what they want, because I found
21 that this was not true in Prince Georges County, when our

1 campaign for delegate to this Convention was being waged.
2 We went into that campaign saying that we were to come
3 to Annapolis with an open mind, and we found very soon
4 that that was not going to work. In our area, which is the
5 southern part of Prince Georges County, the people had one
6 real interest in this Convention and, of course, we hoped
7 that they had many more interests, but the one thing that
8 they were adamant on was that we come to Annapolis to see
9 that their vote was retained for the Comptroller and the
10 Attorney General.

11 I would say that we ran into this attitude at
12 least 100 to 1 in the part of the country from which
13 we come, and I would say that we would not be here, those from
14 our area, if we had not said that we stood for this position.

15 This official performs a vital administrative
16 and policy making function which is far from non-technical,
17 as it has been described. It has worked well over these
18 many, many years. The supervision and control of over
19 \$1 billion of State funds annually is certainly important.
20 Regardless of what we have heard, I believe that the checks
21 and balances are definitely important and are valuable to

1 all of us.

2 Another idea that I had received is that we
3 have heard often that we need Ombudsmen to act as represen-
4 tatives of the people in relation with government. I
5 submit that we have just such an ombudsman in fiscal matters
6 in the person of the Comptroller. Taxpayers with a problem
7 can pinpoint responsibility easily and find answers rapidly.

8 DELEGATE CLARK: You have 30 seconds.

9 DELEGATE ROBIE: Thank you.

10 Finally, I contend that the two party system in
11 our State benefits from having the three top officials
12 elected. I believe that the voters in the last election
13 would have been very reluctant to vote for a governor
14 from the minority party if they had been handing over to
15 him the full State government in one package.

16 Finally, I do not believe that we should give
17 the Governor absolute powers. I do believe we should
18 strengthen his hand, as we will be doing, I am certain;
19 but please help me retain the Comptroller as an elected
20 official.

21 DELEGATE CLARK: The Chair recognizes Delegate

1 Adkins.

2 DELEGATE ADKINS: I yield five minutes of
3 the Committee's time to Delegate Mauer.

4 DELEGATE MAUER: Mr. Chairman and Ladies and
5 Gentlemen:

6 Under Article VI of the present Constitution
7 the Department of the Treasury is headed by a Comptroller
8 elected by the people and a Treasurer elected by the legis-
9 lature. The Comptroller keeps the accounts. The Treasurer
10 is responsible for the cash; but there was a third
11 element, inspection of the records of both the Comptroller
12 and the Treasurer, by the Governor under Article II, section
13 18; and this created, in effect, a troika within the
14 executive branch to handle finances.

15 When this section 18 was debated in the 1867
16 Convention, it was questioned, according to the Baltimore
17 Sun. Mr. Brown of Baltimore City thought this pro-
18 vision couldnot be carried out unless a governor was always
19 elected who is a competent bookkeeper.

20 The receipts and disbursements of the State
21 of Maryland amount to \$3 million per annum and

1 a thorough examination such as is here contemplated would
2 occupy the Governor all this time.

3 Well, the section did pass, and it is honored
4 in the breach because today we have a budget of 1 billion,
5 not 3 million. We have 38,000 State employees, not 500.
6 And the old structure isn't workable.

7 In fact, the Governor for some time has
8 appointed a State auditor who, under the supervision of
9 the Comptroller, audits the accounts of the State, the
10 accounts set up by the Comptroller.

11 This Convention in one of its first actions
12 very wisely transferred the post-audit function to the
13 General Assembly. The post-audit function carried out by
14 another Branch of Government is a true protection of the
15 people. It is a deterrent of major proportions, not a mere
16 after-the-fact report.

17 Taking post-audit out of the executive branch
18 is just the first step in modernizing the executive, and
19 now we must take the next step, and that is to make
20 sure that the ability to plan, to present, to implement
21 the administration program is within the capability of

1 the chief executive.

2 The next step, fellow delegates, is to make
3 the chief fiscal officer responsible to the chief execu-
4 tive. I urge this Convention to shackle our State
5 government. I urge this Convention to modernize and strength-
6 en the executive branch, to parallel the improvements in
7 the legislative and judicial branches which have been made
8 already.

9 I urge you to vote against the minority amend-
10 ment.

11 DELEGATE CLARK: The Chair recognizes Delegate
12 Sybert.

13 DELEGATE SYBERT: Mr. Chairman, I yield two
14 minutes of the minority time to Delegate Stern.

15 DELEGATE CLARK: The Chair recognizes Delegate
16 Stern.

17 DELEGATE STERN: This talk is equating the
18 executive officer of the State with the Executive officer of
19 a corporation, and I submit that this comparison cannot be
20 made because the purpose would be too different. The
21 purpose of an operation of a business is to make a

1 profit. The purpose of the government is to serve the
2 people.

3 In serving the people we don't look at the bottom
4 line of the financial statement as we do in business, to see
5 how well the governor or the chief executive officer has
6 done. In serving the people, the people ask that they be
7 represented completely through the Executive Branch.
8 Business has seen of late that it is necessary to expand
9 its executive offices. In fact, just last week one of the
10 nation's largest corporations, because of its vast diversity
11 in its business has decided to change its top structure
12 to make more power at the top, wider at the top for more
13 people to be allowed to operate its diversity.

14 Reference was just given to a post-audit. It means just
15 what it says, after the fact an auditor comes in and re-
16 views the records.

17 All accountants and auditors recommend a check
18 and balance within every business sytem known as internal
19 control. This elected Comptroller and elected Governor
20 serve as in business, as a check and balance of internal
21 control.

1 DELEGATE CLARK: The Chair recognizes Delegate
2 Adkins.

3 DELEGATE ADKINS: I yield two minutes to Dele-
4 gate Sollins.

5 DELEGATE CLARK: The Chair recognizes Delegate
6 Sollins.

7 DELEGATE SOLLINS: Mr. Chairman, a strong ju-
8 dicial article has already been approved by this committee
9 and an effective legislative article.

10 It is now equally incumbent upon us that the
11 third branch of government, the executive branch be made
12 an equal and coordinate part of our State government.
13 To do this, the Governors hand must be strengthened, and
14 one of the major ways in which this can be accomplished is
15 to permit the governor to select the State's fiscal chief,
16 the Comptroller.

17 For too long candidates for Comptroller have
18 been selected by gubernatorial candidates for political
19 reasons, for the area in which they live, rather than fiscal
20 ability or financial knowledge.

21 On the other hand, we elect a governor because

1 we believe we want the programs which he endorses.
2 To carry out these programs the governor must have
3 the complete support of all members of the executive
4 branch. If the governor attempts to go too far we will
5 have the strong effective legislature which we have created,
6 the reformed judicial system which we have established
7 to check him if necessary.

8 The people of the State want effective State
9 government. This means that each of the three branches must
10 be equally able to carry out and accept the responsibilities
11 with which they are charged. A divided executive is not
12 able to carry out the job which we expect.

13 The Washington Post, in an editorial, which one
14 of our delegates alluded to earlier, suggests this is
15 not the time for compromise. I agree, because better
16 government cannot be compromised.

17 DELEGATE CLARK: The Chair recognizes Delegate
18 Sybert.

19 DELEGATE SYBERT: I should like to yield two
20 minutes to Delegate Dukes.

21 DELEGATE CLARK: The Chair recognizes Delegate

1 Dukes.

2 DELEGATE DUKES: Mr. Chairman, I voted yester-
3 day against the Board of Public Works, and I shall do so
4 tomorrow and tomorrow and tomorrow. I do not feel that
5 the troika system has everworked. It did not work along
6 the ancient Nile, and it did not work in Rome. While it
7 is working here, it is not working efficiently.

8 I live where Mrs. Robie lives. I overheard
9 Mr. Boyce say that the -- not that the people don't know
10 what they want; but he said that we didn't know what the
11 people wanted.

12 I do, because they call me and tell me, and they
13 want to elect their officials. They tell me. I don't
14 think the only quality is competence. It is helpful if
15 his blood is warm and his fingers reach out and touch the
16 hand of the people.

17 If we have an elected comptroller we will satis-
18 fy most of the people. They will have some voice in it.

19 I am sorry that Mr. Kiefer's motions will not be
20 able to be effective. I struck my own compromise. I
21 believe the people should be able to elect their officers,

1 and I will vote against the Board of Public Works so as
2 not to handicap the Governor.

3 DELEGATE CLARK: The Chair recognizes Delegate
4 Adkins.

5 DELEGATE ADKINS: Mr. Chairman, may I use
6 the couple minutes remaining to sum up for the majority
7 report?

8 This question need not be divisive of this Con-
9 vention. It has been suggested because of the political
10 overtones which it has that we will leave these
11 halls completely divided, with the blood flowing freely
12 over the case. That need not be the case. It is an intense
13 question of political management. It is an important
14 question as to the future of this State.

15 The maturity of this Convention so far has been
16 such that it has never failed to arrive at a proper decision
17 on issues where substantial questions of public equity were
18 involved.

19 This is such a question. We are not writing
20 this Constitution for the moment. We are writing this
21 Constitution for the next presumably 100 years.

1 I ask you in your consideration of this question
2 not to let the fact that it has been suggested that we will
3 be divided, that we will be sharply put at each other,
4 to be determinative of the issue in your judgments.

5 Consider it in terms of the tri-partite system
6 of government with a strong executive, a strong legislature,
7 and a strong judiciary, a government that you can go forth
8 from these halls and defend to your voters. Let not the
9 pressures of the moment decide this basic issue. The ma-
10 jority has every confidence that if a decision is approached
11 with that frame of mind, as this Convention has approached
12 all its other decisions, it will vote with the majority,
13 and more than that, we will go forth a united, not a
14 divided Convention.

15 DELEGATE CLARK: Delegate Sybert, according
16 to the time keeper you still have seven minutes.

17 DELEGATE SYBERT: Mr. Chairman, I would like
18 to yield three minutes to Delegate Storm.

19 DELEGATE CLARK: Delegate Storm.

20 DELEGATE STORM: Mr. Chairman and fellow dele-
21 gates:

1 I think really that the main problem here is
2 strengthening the hand of the Republican Governor, and we
3 are willing to do this. Now, please follow me on this, be-
4 cause I believe that a vital question is concerned here.

5 I believe in a Board of Public Works. I believe
6 in having an elected Comptroller on that Board. I believe
7 that this is especially necessary when we have a Democratic
8 Governor, because a Democratic Governor, with the usual
9 Democratic legislature, has a great deal to say regarding
10 the selection of the Treasurer, and I submit to you we are
11 writing this Constitution for Democratic as well as Repub-
12 lican Governors, and I suggest to you that it is good to
13 have public discussion with an elective Comptroller able
14 to disagree, to point out dangers which he knows from being
15 the chief fiscal officer of the State not to make
16 policy, not to adopt a poverty program and all that sort
17 of thing; but one who can point out dangers if the Governor's
18 advisers want him to do something that he
19 really shouldn't do, and wouldn't do if he understood it
20 right.

21 I suggest that you Republicans should support

1 this because this will be your insurance in case a Democratic
2 Governor is ever again elected, and I believe he will be
3 someday.

4 Then, you see, we don't have a weak governor.
5 When we have a Democratic Governor, he is strong. It is
6 only the Republican Governor that we need to assist.

7 I am willing to assist him. We are giving him
8 powers of reorganization. We are giving him a majority
9 on the Board of Public Works; but please, do not
10 do away with the Board of Public Words and someone on it
11 who is responsible to the people and able to get up on his
12 feet and say, "Gentlemen on the Board of Public Works,
13 this is not for the best interests of the people, and these
14 are the reasons why."

15 Then it will be a meaningful press conference
16 and public meeting. But if you just have the Governor
17 alone select, when you next have a Democratic Governor he
18 will be an absolute dictator.

19 I agree we should strengthen the power of the
20 Republican Governor, but please, keep the Comptroller
21 elected to protect the people. The people want this

1 protection, and this Constitution, I am afraid, will go
2 down in defeat if you take away from them two of their
3 Statewide officers.

4 Thank you.

5 THE CHAIRMAN: Delegate Adkins.

6 DELEGATE ADKINS: Mr. Chairman, we yield the
7 balance of our controlled time. We surrender the balance
8 of our controlled time.

9 THE CHAIRMAN: The Chair would like to recognize
10 the presence in the gallery of 80 members of the League
11 of Women Voters of Montgomery County, and to say that we
12 are delighted to have them with us. (Applause.)

13 On the basis of conversations which the Chair
14 has had this morning with some of the delegates, the
15 Committee on the Executive Branch, and on the basis of
16 statements made by other delegates, the Chair would like
17 to have the Committee on the Executive Branch make one
18 more effort to arrive at a recommendation to this Conven-
19 tion which could be concurred in by all or nearly all of
20 the members of this Committee.

21 The Chair believes that it is at least worth

1 the effort to have a meeting of that committee at the
2 present time. In order to do this, the Convention would
3 have to recess for perhaps an hour, because of the
4 fact that the other matters on the agenda are either
5 not ready to move forward immediately or are of such a
6 nature as to require the presence in the chamber of all
7 the delegates.

8 The Chair therefore proposes to call on Delegate
9 Powers to move that the committee rise so that the Convention
10 can take a recess.

11 For what purpose does Delegate Malkus rise?

12 DELEGATE MALKUS: Mr. President and Members of this
13 Convention. This is an unusual procedure.

14 THE CHAIRMAN: For what purpose does Delegate
15 Malkus rise?

16 DELEGATE MALKUS: Just to speak, sir.

17 THE CHAIRMAN: There is no matter before the
18 house. If you will permit me, I will let Delegate Powers
19 make a motion, and then we will recognize you to speak on
20 the motion, if that is your purpose.

21 DELEGATE MALKUS: May I next be recognized?

1 THE CHAIRMAN: You may.

2 DELEGATE POWERS: I move that the Committee of
3 the Whole rise and report that it still has under considera-
4 tion Committee Report No. EB-1.

5 THE CHAIRMAN: Is there a second?

6 (Whereupon, the motion was seconded.)

7 THE CHAIRMAN: The motion is not debatable, but
8 go ahead, Delegate Malkus.

9 DELEGATE MALKUS: Mr. President, Members of
10 the Convention, and honorable body:

11 I don't want to oppose the motion. The only
12 thing I want to do is to say that this is unusual pro-
13 cedure. When the administration of this Convention faces
14 a possible defeat, they always find a hole to crawl in.

15 And, Mr. President, I have listened with
16 interest. You have strength in the judiciary and strength
17 in the legislative branch. I don't know how they have done
18 it, but by all means, let us make the Governor all-powerful.

19 What you have forgotten is this: In a democracy
20 the people are the most important thing. Let us make this
21 a three-way power control, but for heaven's sake, let's

1 give everybody the right to vote, everybody. Cut the
2 voting age down to 19, but let us also, at the same time,
3 get rid of all the elected officers.

4 THE CHAIRMAN: Delegate Malkus, the Chair
5 suggests that your remarks aren't directed to the motion.

6 DELEGATE MALKUS: Mr. President, I know
7 that this is a hard place for a person to express his
8 opinion. This is not democracy at work. This is kind of
9 a controlled situation, and I have to find these little
10 opportunities to tell you how I feel.

11 THE CHAIRMAN: You seem to be doing that quite
12 frequently and at length, but do you have any remarks
13 to address to this motion?

14 DELEGATE MALKUS: Mr. President, my voice is
15 coming back, and unless you use the mace and throw me out
16 of these chambers, I shall continue to talk, because the
17 one thing that this body is forgetting is the people. No-
18 body cares about the people -- let us make the governor a
19 king. Let us take care of the judiciary, let us make the
20 legislature all-powerful, but for heaven's sake, don't
21 let the people have anything to do with it.

1 Let us elect one person on the statewide level,
2 and maybe a little while later a lieutenant governor,
3 but I am pleading for democracy. You may not under-
4 stand what I am talking about, but I am pleading that the
5 people should have a right to vote.

6 Let us not take all the elective officers away.

7 Mr. President, I will continue later on.

8 THE CHAIRMAN: Delegate Scanlan.

9 DELEGATE SCANLAN: I believe it is an undebat-
10 able motion, but since the **precedent** has been created, I
11 would like to say that the procedure is not quite that
12 unusual.

13 You will recall that the Federal Constitution
14 bogged down on the question of whether there should be
15 one house based on **population** ~~or~~ one house based on
16 representation by state. The matter was referred to a
17 special committee, and out of the proceedings of that
18 special committee evolved a compromise upon which this
19 nation was built.

20 How in heaven's name can we progress with the
21 matters of the Convention unless reasonable men sit down

1 and give a little.

2 Judah P. Benjamin said in 1850 at the
3 Louisiana Constitutional Convention: "How can you induce
4 those with whom you disagree to change their opinions if you
5 announce in advance that you are irrevocably wedded to
6 yours?"

7 I will commend the effort of the Chair and the
8 delegates in their attempt to work out what I hope will be
9 a successful compromise and let the Convention go on with
10 the good work it has been doing.

11 THE CHAIRMAN: The question arises on the
12 motion that the Committee of the Whole rise.

13 For what purpose does Delegate White rise?

14 DELEGATE WHITE: Point of information.

15 THE CHAIRMAN: I wonder if this meeting will be
16 open to the rest of the delegates. (Laughter.)

17 THE CHAIRMAN: I would hope that the delegates
18 would permit the committee to meet among themselves
19 and without any interference or suggestion from other dele-
20 gates. This is the only possible way that the 20 members
21 of the committee can come to an agreement. If all the

1 delegates are going to attend the session, then we might
2 as well not have a separate meeting of the Committee.

3 DELEGATE WHITE: Are you suggesting, Mr.
4 Chairman, that delegates should refrain from going, sitting,
5 and observing?

6 THE CHAIRMAN: I certainly am.

7 For what purpose does Delegate Della rise?

8 DELEGATE DELLA: A parliamentary inquiry.

9 THE CHAIRMAN: State your inquiry.

10 DELEGATE DELLA: I think under our rules we
11 have controlled time and uncontrolled time. Inasmuch as
12 you have ordered the Executive Committee back into session,
13 are we then under a controlled time again on their report,
14 or uncontrolled time when we return to the chamber?

15 THE CHAIRMAN: We will resume under the debate
16 schedule. We have finished the debate on the controlled
17 time. We would have the uncontrolled time.

18 DELEGATE DELLA: We now possibly will have a new
19 proposal that may come out of the committee. It may be
20 entirely different from their original report. Does
21 that controlled time still apply?

1 THE CHAIRMAN: It would not apply.

2 DELEGATE DORSEY: A parliamentary inquiry.

3 THE CHAIRMAN: State the inquiry.

4 DELEGATE DORSEY: Do I have three minutes to
5 speak on the motion to recess?

6 THE CHAIRMAN: It is not debatable. The Chair
7 has permitted discussion, but it is not debatable.

8 DELEGATE DORSEY: Delegate Malkus has had the
9 time.

10 THE CHAIRMAN: The Chair permitted the discussion.
11 It should not have done so. The motion is not debatable.

12 The question arises on the motion to rise. All
13 in favor signify by saying Aye; contrary, No.

14 The Ayes seem to have it. The Ayes have it
15 and it is so ordered.

16 (The mace was replaced by the Sergeant at Arms.)

17 (Whereupon, at 11:07 a.m., the Committee of
18 the Whole rose, and the Convention reconvened.)

19 THE PRESIDENT: The Convention will please
20 come to order.

21 The Chair recognizes Delegate Powers.

1 DELEGATE POWERS: I move that we recess for one
2 hour.

3 THE PRESIDENT: Is there a second?
4 (Whereupon, the motion was seconded.)

5 THE PRESIDENT: Delegate Morgan.

6 DELEGATE MORGAN: I want to announce that the
7 Committee on the Executive Branch will meet in the
8 committee room immediately following the recess. (Laughter.)

9 THE PRESIDENT: Let me say to you that the warn-
10 ing bell will be sounded 15 minutes ahead and five minutes
11 ahead, just as though the session were normally resuming.

12 Under the motion, the Chair would take it we
13 would resume at 12:10.

14 Delegate Dorsey.

15 DELEGATE DORSEY: I would like to announce there
16 will be a minority meeting of the Executive Branch Committee
17 immediately across the hall immediately after the recess.

18 THE PRESIDENT: Are you ready for the question?

19 All in favor, signify by saying Aye; contrary,
20 No.

21 The Ayes have it.

1 It is so ordered.

2 (Whereupon, at 11:10 a.m., the Convention
3 recessed for purposes of further deliberation by the
4 Committee on the Executive Branch, to reconvene at 12:10 p.m.
5 of the same day.)

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1 November 28, 1967 - 12:10 p.m.

2 THE PRESIDENT: The Sergeant at Arms will
3 clear the aisles and close the doors.

4 The Convention will please come to order.

5 Roll call.

6 (Whereupon, the roll was called.)

7 THE PRESIDENT: Has every delegate answered
8 roll call?

9 The Clerk will record the roll call.

10 The Chair recognizes Delegate Byrnes on a matter
11 of personal privilege.

12 DELEGATE BYRNES: Mr. President, I would like
13 to suggest in the third district of the City we are very
14 fortunate to have the assistance, in our attempt to inform
15 the public of what we have been doing down here, the assist-
16 ance of many community leaders, and I would like to ask the
17 Convention to welcome one of them this afternoon, Mr.
18 Marion Walker, American Legion Post No. 10.

19 Thank you.

20 THE PRESIDENT: We are delighted to have him
21 with us. (Applause.)

1 The Chair recognizes Delegate Morgan for the
2 purpose of making an announcement.

3 DELEGATE MORGAN: Mr. President, the Executive
4 Branch Committee met during the recess of the Convention,
5 and while we couldn't come to an agreement on all issues
6 before the Convention, before the Committee of the Whole,
7 we did, by a vote of 15 to 5, reach agreement that the
8 Committee at the proper time, when we get to Committee
9 Recommendation No. EB-1, would propose the following
10 amendment:

11 At the proper place in Committee Recommendation
12 No. EB-1, insert the following: "Section ____, Inter-
13 departmental Board of Review" -- which is in essence the
14 Board of Public Works with the name more accurate -- "There
15 shall be in the executive branch of the government an inter-
16 departmental Board of Review which shall consist of the
17 governor, a head of a principal department designated by the
18 governor, and an individual appointed to the Board by the
19 General Assembly. The Board shall perform in such manner
20 and have such powers as the General Assembly may prescribe,
21 including, but not limited to the following:

1 (1) The creation of State debt; (2) expenditure from
2 the proceeds of such debt; (3) expenditures for the acqui-
3 sition of land or the construction of buildings, equip-
4 ment, or other public works; (4) the transfer or disposal
5 of State property or rights; (5) expenditures of lump sum
6 appropriations not curtailed by law; (6) expenditures from
7 the General Emergency Fund of the State; and (7) the
8 establishment from time to time of the State property tax
9 rate."

10 As I say, the Committee could not come to agree-
11 ment on whether the Comptroller should be elected or
12 appointed, whether the Attorney General should be elected
13 or appointed, or whether the Treasurer should be elected
14 by the General Assembly or not; but at least we did set
15 up a Board of Public Works where, unless the General
16 Assembly appoints him to it, the Comptroller, whether
17 elected or not, or whether elected, will not be on the
18 Board of Public Works. So that is the compromise that
19 we reached, Mr. President, and this will be presented.

20 However, the voting, whether the Comptroller is
21 elected or appointed, whether the Attorney General is

1 elected or appointed, whether the Treasurer is elected by
2 the General Assembly or not, the committee will offer this
3 as an amendment to Committee Recommendation No. EB-1
4 at the proper time.

5 THE PRESIDENT: And I assume you mean to
6 Recommendation 1 of Committee Report EB-1?

7 DELEGATE MORGAN: That is right.

8 THE PRESIDENT: Thank you.

9 For what purpose does Delegate Malkus rise?

10 DELEGATE MALKUS: Mr. President, to ask the
11 Chairman if he will yield to a question.

12 THE PRESIDENT: State the question.

13 DELEGATE MALKUS: Will we have this in writing
14 before we vote on any of the issues before us?

15 THE PRESIDENT: The Chair will answer the
16 question.

17 Every amendment has to be in writing under the
18 rules, and this will be in writing. It will not be pre-
19 sented prior to the luncheon recess, because it is quite
20 obvious we could not conclude items 2 and 3 on the debate
21 schedule before luncheon recess.

1 DELEGATE MALKUS: Thank you, Mr. President.
2 You are very efficient. I ask the Chairman and I get
3 an answer from the President, so I am very lucky.

4 THE PRESIDENT: Thank you.

5 The Chair recognizes Delegate Powers.

6 DELEGATE POWERS: Mr. President, I move the
7 Convention resolve itself into the Committee of the Whole
8 to resume consideration of Committee Report No. EB-1.

9 THE PRESIDENT: Is there a second?

10 (Whereupon, the motion was seconded.)

11 THE PRESIDENT: All in favor, signify by saying
12 Aye; contrary, No.

13 The Ayes have it. It is so ordered.

14 (The mace was removed by the Sergeant at Arms.)

15 (Whereupon, at 12:28 p.m., the Convention
16 resolved itself into the Committee of the Whole.)

17 THE CHAIRMAN: We will resume consideration of
18 Committee Report EB-1, and particularly of Recommendation
19 No. 2 under the debate schedule.

20 Under the debate schedule there is available
21 30 minutes of uncontrolled, but limited debate.

1 The question arises on the amendment of the
2 committee recommendation, of recommendation 2 of Committee
3 Report EB-1, that the word "not" in line 18 of the Com-
4 mittee Report be omitted.

5 Does any delegate desire to speak in favor of
6 the amendment against the committee recommendation?

7 Delegate Della.

8 DELEGATE DELLA: Mr. Chairman.

9 THE CHAIRMAN: Excuse me.

10 Delegate Sybert.

11 DELEGATE SYBERT: I rise, Mr. Chairman, to a
12 point of parliamentary procedure.

13 THE CHAIRMAN: State the inquiry.

14 DELEGATE SYBERT: Before the recent recess we
15 had just about finished the controlled time on the
16 matter of the committee report, Recommendation No. 2.
17 We had not, however, gotten into the uncontrolled debate
18 at all. That seems to me to be the pending item of busi-
19 ness before the Committee of the Whole.

20 THE CHAIRMAN: It is indeed. That is precisely
21 what the Chair stated, that we are now in the

1 uncontrolled but limited portion of the debate. There
2 is 30 minutes allowed for this under the debate schedule.

3 DELEGATE SYBERT: I am sorry if I misunderstood
4 the President or the Chairman, but I understood the Chair-
5 man to say that we were now embarking on a discussion of
6 the matter just brought before the convention, reported
7 to the Convention by the Committee Chairman. That is
8 recommendation number 1, not 2.

9 THE CHAIRMAN: No.

10 So that there will be no misunderstanding,
11 the announcement by the Chairman of the Committee on the
12 Executive Branch has not in any way altered the debate
13 schedule as amended. As amended on the debate schedule we
14 considered points or recommendations 2 and 3, then returned
15 to recommendation 1, and then go to 4 and 5.

16 I take it from the announcement of the Chairman
17 of the Committee that when we reach recommendation 1, which
18 is after we have concluded consideration of recommendations
19 2 and 3, he will offer an amendment. It will be pertinent
20 at that time.

21 At the present time we are resuming discussions

1 under recommendation 2, the question of the election of the
2 comptroller.

3 DELEGATE SYBERT: Mr. Chairman.

4 THE CHAIRMAN: Delegate Sybert, I was of the
5 impression before adjournment that the controlled time
6 allotted to you and to Delegate Adkins had expired. The
7 time keeper has just handed me a note saying that you
8 actually have four minutes of controlled time available to
9 you. I am sorry.

10 DELEGATE SYBERT: That is what I understood.

11 I would like to yield three minutes of that
12 time to Delegate Carson.

13 THE CHAIRMAN: Delegate Carson.

14 DELEGATE CARSON: Mr. Chairman, ladies and
15 gentlemen:

16 When I came to this Convention I think I
17 approached the issues of the Comptroller and the
18 Attorney General with an open mind. I had, in fact,
19 stated during the election campaign preceding my coming
20 here that I thought we ought to investigate whether or not
21 these offices should remain elective.

1 I have attempted to give these issues my best
2 thought, and I have become convinced that both should be
3 elected.

4 The Comptroller of this State has been in exist-
5 ence for 166 years now, beginning in the Constitution of
6 1851. My remembering of history shows that in 1851 this
7 State, so far as the fiscal matters were concerned, was in
8 a perlious state. We got out of that situation, and for
9 166 years we have had decent and responsible fiscal respon-
10 sibility here in the State of Maryland. We have had respon-
11 sible and eminent persons willing to run for and be elected
12 to the office of Comptroller, including an eminent delegate
13 here today who later became Governor of this State for
14 two terms, and did a fine job.

15 I think this office should, because of this
16 history, be retained as an elective one. I think we should
17 not discard what history has shown to us to be a good
18 office performing a valuable function.

19 I think it is also important the people over-
20 whelmingly think this. They desire this. They understand
21 this. They want it.

1 I think we should vote in favor of it.

2 Thank you, Mr. Chairman.

3 THE CHAIRMAN: Delegate Adkins, I under-
4 stand you have a little over two minutes that you may
5 allocate, if you choose.

6 DELEGATE ADKINS: Mr. Chairman, I surrender
7 my time, the rest of my controlled time. I am perfectly
8 willing now to hear from the rest of the delegates.

9 THE CHAIRMAN: Delegate Sybert.

10 DELEGATE SYBERT: I will do the same, Mr. Chair-
11 man.

12 THE CHAIRMAN: Does any other delegate desire
13 to speak in favor of the amendment against the committee
14 recommendation?

15 Delegate Della.

16 DELEGATE DELLA: Mr. President, is that under
17 uncontrolled time?

18 THE CHAIRMAN: Uncontrolled but limited time.

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1 DELEGATE DELLA: Mr. President, fellow
2 delegates to this Convention, I suppose six months ago
3 that you would have gotten odds of a thousand to one
4 that I would be speaking in favor of Goldstein retaining
5 his job, because I have never voted for Mr. Goldstein
6 and never will. But I am leaving personalities alone.

7 I have had experience with the comptroller's
8 office. He has been there to audit the President of the
9 Senate's books, as to disbursements, and I was well satis-
10 fied with the job that was done. I thought it was
11 necessary that it should be done. I am sure, if any
12 vouchers are to be paid, I think we need someone, I am
13 certainly not speaking of personalities when I speak of
14 Mr. Goldstein -- but I think we need someone to look
15 over the fiscal matters of this state, and I might say
16 that that job as comptroller is more sensitive than the
17 job of being executive of this state.

18 You must experience government and you must
19 go through the experience of seeing how the office
20 operates.

21 I would prefer that the governor be appointed

1 by someone other than having the comptroller appointed,
2 because I think the comptroller speaks for the public.

3 Now I have heard stated in the halls around
4 here that Mr. Goldstein embarrassed Mr. Agnew. Lo and
5 behold, I think each branch of government has embarrassed
6 the other branch at one time or another, and certainly
7 the legislative branch has very often embarrassed the
8 chief executive of the state, but as far as personalities,
9 and I think we have got to get away from personalities,
10 because Mr. Goldstein embarrassed the governor on esti-
11 mates of income, we have got to get rid of Mr. Goldstein.

12 I would like to get rid of Mr. Goldstein by
13 the ballot, not by the Constitutional Convention, because
14 I think we are only hurting the state of Maryland and
15 neglecting the public when you take away from the public
16 that elective office.

17 Now the comptroller's position was also recom-
18 mended to the public in New York. If you will look at
19 the proposal of the new Constitution there, they recommend
20 that the comptroller and attorney general shall be chosen
21 at the same general election.

1 THE CHAIRMAN: You have one-half minute.

2 DELEGATE DELLA: If you look at the various
3 state Constitutions, a great majority of those states
4 provide for the election of the comptroller and the
5 election of the attorney general.

6 Now, if we are going to compromise on
7 anything, I can see the area of compromise as to the Board
8 of Public Works, or attorney general.

9 THE CHAIRMAN: Your time has expired, Delegate
10 Della.

11 DELEGATE DELLA: I am for the amendment. I
12 hope it is adopted.

13 THE CHAIRMAN: Does the delegate desire to
14 speak in opposition?

15 Delegate Bennett.

16 DELEGATE BENNETT: Mr. Chairman, I have heard
17 a great deal of talk here, conversation about the will of
18 the people being expressed in this regard, and how impor-
19 tant they consider the issue. I confess to you that I have
20 not had a single letter from any one of the 175,000 people
21 in the district that I represent expressing opinions as

1 to whether or not the comptroller should be elected or
2 whether or not he should be appointed, but for fear that
3 I might have misunderstood my constituents during the
4 recess here, I canvassed the attractive ladies who are
5 members of the League of Women Voters of Montgomery
6 County; some 80 of them have come here to see us, and I
7 found not only that I think without exception they favor
8 an appointive comptroller general, but in addition to
9 that, they gave me a copy of the position of the League
10 of Women voters on this matter.

11 They represent more than 3500 very knowledg-
12 able women interested in the well-being of their govern-
13 ment, and this is what it says: "The League favors strength-
14 ning the office of governor. The governor should have
15 the power to appoint and remove all administrative
16 heads of departments, including the comptroller and the
17 attorney general. He should also have the power to
18 initiate the reorganization of the executive branch."

19 It seems to me that that is a very important
20 point of view, and it comes only after the League has
21 carefully considered the issues.

1 Moreover, of course, the League favors, as I
2 Lieutenant
3 do, that Maryland have an elected/governor. Now that issue
4 hasn't been discussed here this morning as yet and it has
5 a very important bearing it seems to me upon whether or
6 not the comptroller and the attorney general for that
7 matter should be appointed or elected.

8 If we have a Lieutenant Governor, elected by
9 the people, who have--

10 THE CHAIRMAN: You have a little less than a
11 half-minute.

12 DELEGATE BENNETT: --who has definite assigned
13 duties that greatly minimizes the importance of an elected
14 comptroller general and attorney general, and I hope the
15 report of the committee will be supported.

16 THE CHAIRMAN: Any other delegate desire to speak
17 in favor of the amendment?

18 Delegate Frederick?

19 DELEGATE FREDERICK: Mr. Chairman, I would
20 like to clarify a statement made in error before our
21 break. There was a question put to Delegate Sybert
22 about the interest of our voters in the office of comptroller

1 or attorney general, and Delegate Sybert, not knowing,
2 said he realized there was a drop-off from the head of
3 the ticket after it left the head of the ticket.

4 I would like to give you the figures from
5 the book: First, the last election, the winning governor
6 got 455,000. The winning comptroller got 528,000, so
7 there is a slight interest. The winning attorney general
8 got 530,000, so rather than a drop-off, it is an increase.

9 Now, going back to '62, where we had one of the
10 finest governors this state has ever had, the winning
11 governor, Governor Tawes, got 428,000, and he is one of
12 our greatest. The winning comptroller got 434,000, an
13 increase. The winning attorney general got 422, so rather
14 than a decrease, we do have an increase, that people
15 of this state are interested in these two offices. It is
16 not a question of a lessening in their interest. They
17 have more interest, and speaking of the League of Women
18 Voters, I am very well equipped with some of the League
19 of Women voters and I was in contact with some of the
20 League of Women voters over the past weekend, and I know
21 of no petition, that was passed through the state of

1 Maryland as to their position this weekend on the
2 comptroller or the attorney general.

3 Thank you.

4 DELEGATE BENNETT: Here it is.

5 THE CHAIRMAN: Delegate Sickles.

6 DELEGATE SICKLES: Mr. Chairman, I would like
7 to oppose the motion, and I must admit to great disappoint-
8 ment with respect to the votes that we had yesterday.
9 I say disappointment, but not surprise. I think the two
10 themselves are quite awesome.

11 Dictatorship and integrity in government: I
12 believe I share the concern of all of our citizens on
13 these two very important aspects, but unfortunately there
14 is an element here which even transcends these two basic
15 elements, and I certainly want to treat this as kindly
16 as possible, and I am reminded of the poem that I am sure
17 so many of you have heard, "I am careful of the words I
18 say, I make them soft and sweet, I never know from day to
19 day what ones I'll have to eat."

20 So in sort of thrashing around looking for
21 a phrase, I found one this morning in the Washington

1 Post, and not on the editorial page, but if you will
2 look at the article by Jack Eisen, his last sentence, and
3 I think it sort of puts it all in focus. He says,"but
4 as the talk and the shouting proved the last time around,
5 all bets are off when they involve wounded office
6 holders fighting for political survival."

7 I don't object to office holders fighting
8 for political survival. I am human enough to think that
9 I will be perhaps doing the same thing. So I fault no
10 one, but I think it puts us all to a bigger test on this
11 vote than any other test we have had before.

12 Many of you worry about the tyranny of the
13 state executive. I worry about the tyranny of the National
14 Government, if we, this state, do not continue to pull
15 our share of the load. Some worry about a structure,
16 which will be the appearance of integrity in Government.

17 I worry about a system which will attract
18 competent and honest men to do a good job.

19 Some worry about the destruction of our
20 democracy by removing some office holders from the ballot
21 books, and I would worry about the destruction of our

1 democracy by making those who are elected to office
2 unable to perform.

3 I worry about a system that says that the
4 governor is capable and able to appoint those people
5 who are concerned with our health but can't appoint the
6 collector of taxes.

7 THE CHAIRMAN: You have one-half minute,
8 Delegate Sickles.

9 DELEGATE SICKLES: A system that allows the
10 governor to select those in whom we trust the lives of
11 our children, but we can't trust him to select the head
12 bookkeeper.

13 I think we ought to put all this in proper
14 focus. I think we ought to look closely at the kind
15 of functions that are being performed, and where they
16 belong in our structure of government.

17 I agree to this compromise, rather reluctantly,
18 but I think what it does is show there is really no need
19 for the comptroller to serve on that Board, but some of
20 that Board might perform the functions which is now
21 lacking, of checking on the comptroller.

1 THE CHAIRMAN: Delegate Beachley.

2 DELEGATE BEACHLEY: I would like to speak and
3 tell you just how people in Washington County felt when
4 there was a poll presented to them, in which they
5 were to vote, whether they wanted the election or ap-
6 pointment of a comptroller and also attorney general.

7 A poll was taken by the newspapers in the coun-
8 ty, and the vote was three to one in favor of the election
9 of the comptroller and also of the attorney general.

10 In addition, during the campaign prior to the
11 convention, there were very few persons who mentioned that
12 they were in favor of appointed officials in their county,
13 and since the Convention has been in session, I have
14 spoken to several groups and I can only recall the three
15 people who definitely spoke out for the appointment, so
16 in our county, as I see it, from those two points of view,
17 the results in the paper and also the contacts with the
18 people, they are in favor of the elected official.

19 THE CHAIRMAN: Any delegate desire to speak in
20 opposition to the amendment, in favor of the committee
21 proposal?

1 Delegate Byrnes.

2 DELEGATE BYRNES: Mr. Chairman, very briefly
3 I would like to suggest to the Committee of the Whole that
4 unfortunately I do not have a copy of the proposed
5 compromise, and I think it really speaks directly to this
6 issue; to the extent that the people want an elected
7 comptroller, it is my understanding, from the discussions
8 in my district, what they really want, is someone to
9 exercise some sort of reviewing power over the sensitive
10 functions of the governor, and to the extent that that
11 function is fulfilled in this new board which is my
12 understanding of the proposed compromise it is to fill,
13 I would think that the comptroller is not necessary.

14 Stated another way, I think the people really
15 want the review that is promised us by the suggested compro-
16 mise, and they don't recommend -- they don't really want
17 this elected official just to have this elected official.
18 They are interested in his function.

19 Thank you.

20 THE CHAIRMAN: Delegate Bushong.

21 DELEGATE BUSHONG: Mr. Chairman, I would like

1 to point out that this Convention is doing away with
2 two, or attempting to do away with two elective offices,
3 and replacing an elective office with a Lieutenant
4 Governor who will go all over this state, making speeches
5 and preparing himself to be elected when the governor
6 could no longer run under this Constitution.

7 Now, we talk about Democracy on the other side,
8 but here we talk about dynasty. And I think the people
9 of this state certainly don't want that, and I feel that
10 the people still want to elect their public officials.

11 We have no objection to the election of a
12 Lieutenant Governor, if this Convention wants one;
13 let it be, but why take away with one hand two elected
14 public officers and replace them with one, who shall be
15 the person that goes around the state and tells every-
16 body how good the governor is.

17 THE CHAIRMAN: Delegate Hanson.

18 DELEGATE HANSON: Mr. Chairman, I rise to
19 oppose the amendment.

20 I think if we look at the functions that
21 are performed by the comptroller, we will see that there

1 is no need for the election of this office, and that in
2 fact, it can provide a serious problem for the future
3 development of a strengthened executive branch in Mary-
4 land.

5 The way to strengthen, or correction, the way to
6 check the executive branch, and the financial activities
7 of the executive branch, is with a vigorous legislature,
8 with an effective appropriations system, and with an
9 effective post-audit, and with laws requiring publicity
10 for financial decisions.

11 I think we would not create the office of
12 comptroller, or even consider it if we did not already
13 have that office in the present Constitution.

14 We have already removed the post-audit func-
15 tions and placed those in the legislature where they
16 belong.

17 I am somewhat worried about some of the dis-
18 cussion which suggests that the comptroller must be a
19 watchdog of the treasury, but who watches the watchdog?
20 It seems to me that this properly is a legislative
21 function, and I am far more concerned, far more concerned

1 with the possibility that we would have a comptroller
2 and the governor would have no power adequately to check
3 and controll him, than I am that we would have a governor
4 who would run rampant with finances of the state, and
5 we would have a comptroller simply to controll him.

6 Another function performed by the comptroller
7 is that of the pre-audit. I think all authorities in
8 the field of public financing agree that the pre-audit
9 function is an executive function. It is an integral
10 part of management. It is essential for management to
11 see that its programs are being carried out.

12 There has been some concern expressed on this
13 floor that the post-audit would not provide an adequate
14 control. A post-audit effectively performed will pro-
15 perly provide a very strong and effective control over
16 the financial operations of the governor, and all of
17 the departments that operate under the governor, because
18 one of the functions, of the post-audit ladies and
19 gentlemen, is not just to check up on things several months
20 after they were heard, but to require the executive
21 to undertake the procedures by which those checks can

1 be made effectively and promptly.

2 So here again we have no need for an independent
3 office. The estimate of revenues is an integral part
4 of the budgetary process and certainly no one on this
5 floor has argued that the budgetary process is something
6 of which we ought to divest the governor.

7 THE CHAIRMAN: You have one-half minute, Dele-
8 gate Hanson.

9 DELEGATE HANSON: I believe, Mr. Chairman, that
10 we can enhance popular control over the finances of this
11 state by making the governor responsible, and by simplifying
12 for our government and for the electorate the clear lines
13 of responsibility.

14 THE CHAIRMAN: Your time has expired, Delegate
15 Hanson.

16 DELEGATE HANSON: I urge you to vote against
17 the amendment.

18 THE CHAIRMAN: Delegate Child.

19 DELEGATE CHILD: Mr. Chairman, I speak in
20 favor of the amendment.

21 One of the first meetings that I ever went

1 to in connection with this convention was a meeting near
2 Towson, in which people were called in order to see that
3 a vote came out to call the Convention, and a number of
4 questions were asked, and one question was, will all the
5 Constitution be wiped away and a new Constitution
6 written?

7 Judge Sherbow says, "Oh, No. Whatever is good--",
8 he says "We have an old house. It needs rebuilding. If
9 we have good timbers in it we will retain those timbers."

10 Now, is this elected comptroller a good
11 timber? I could talk on it for a half-hour, but I
12 will simply say that in the 115 years that it has been
13 an elective office, there has never been, so far as the
14 evidence goes before this Convention, before this
15 committee, that there has ever been a bill in the legis-
16 lature to amend the Constitution to change the elective
17 character of that office to appointive, to an appointive
18 office.

19 I think that is the highest thing we can say,
20 that it is a good timber, and should be retained in this
21 Constitution.

1 They say that the governor needs more power.
2 The governor just asked the last legislature for eight
3 more aides to carry on his work. In other words, he has
4 got too much work to do now. He has got enough power
5 now. And it would seem to me that he should be able to
6 turn over something to someone else who is elected by
7 the people.

8 Take away, Mr. Chairman -- take away the
9 elected attorney general; take away the elected comp-
10 troller. 'You are not moving forward, but in my opinion,
11 humble as it is, you are moving the people of Maryland,
12 The government of Maryland, the government of the people
13 of Maryland, back to the nearest point that they were
14 as colonies under King George the third.

15 THE CHAIRMAN: You have one-quarter minute,
16 Delegate Child.

17 DELEGATE CHILD: That is enough. I am for the
18 amendment.

19 THE CHAIRMAN: Any other delegate desire to
20 speak in opposition to the amendment and for the
21 Committee recommendation? (No response.)

1 Delegate Rybczynski, did you still desire
2 the floor?

3 DELEGATE RYBCZYNSKI: Very hurriedly, sir. I
4 will touch on just two points. Delegate Hanson wanted to
5 know who is going to watch the comptroller. I say the
6 people watch the comptroller. That is what we try to
7 accomplish.

8 You have touched the sensitive button and
9 now we are presenting it to you. Number two, you want
10 to know why it is in the Constitution now, and Delegate
11 Carson tried to tell you that. He told you that in
12 1851 there was a scandal, which brought on the office.

13 We don't need another scandal to put it back
14 in. Let's keep the scandals out. Let's keep the office
15 in the Constitution as an elective office now.

16 Now, for those of you who are worried about
17 the Washington newspapers and what they say, let us
18 turn to just one building, one piece of construction in
19 the city of Washington, D. C., and decide whether or not
20 we need a Board of Public Works, and whether or not we
21 need a comptroller who we can go to.

1 Let's look at the latest House of Representa-
2 tives Building, and see who we can go to, just as the
3 national magazines have for the last five or six years,
4 to ask the question, where did the authority come from
5 to spend those hundreds of millions of dollars; who
6 spent the money? Where did it go; who authorized all that
7 hudge expenditure?

8 We don't need that kind of thing here in the
9 state of Maryland. Let's have a representative board, a
10 board we can go to to find out where the money is being
11 spent, how it is being spent, where we have no secrets,
12 where we have nothing to worry about, other than the
13 next election.

14 Vote for this amendment.

15 THE CHAIRMAN: Are you ready for the question?

16 So there will be no misunderstanding, the
17 question arises on the consideration of Recommendation
18 2. Because you have before you a motion for an
19 amendment, there will be two votes on this recommendation.
20 The first vote is a vote on amending the recommendation so
21 as to delete the word "not". If that motion is carried,

1 then you will have submitted to you the recommendation as
2 amended.

3 If that motion to amend is lost, then you will
4 have submitted to you the recommendation in the form
5 presented by the committee.

6 In any event, there will be two votes.

7 The question now arises on the motion to
8 amend the second recommendation contained in Committee
9 Report EB-1, to strike the word "not" from line 18.

10 As thus amended, the recommendation would be
11 that the office of comptroller be provided for in the
12 Constitution. A vote Aye is a vote in favor of the
13 amendment, in other words, a vote in favor of providing
14 for comptroller in the Constitution. A vote No is a
15 vote against the amendment.

16 Cast your votes.

17 Has every delegate voted? Does any delegate
18 desire to change his vote?

19 The Clerk will record the vote.

20 There being 70 votes in the affirmative and
21 68 in the negative, the motion is carried and the

1 recommendation is amended.

2 The question now arises on the adoption of
3 the Committee Recommendation as amended. As amended the
4 Recommendation reads as follows:" The Committee recom-
5 mends that the office of comptroller be provided for
6 in the Constitution."

7 A vote Aye is a vote in favor of that recommen-
8 dation as amended. A vote No is a vote against the
9 recommendation.

10 Cast your votes.

11 Has every delegate voted? Does any delegate
12 desire to change his vote?

13 The Clerk will record the vote.

14 There being 72 votes in the affirmative and
15 66 in the negative, the motion is carried. The
16 Recommendation 2 as amended is approved.

17 The Chair recognizes Delegate Tawes.

18 DELEGATE TAWES: Mr. Chairman, and fellow
19 delegates, my attention has just been called to the
20 presence in the gallery of two very distinguished
21 citizens of my county, the County of Somerset, in the

1 person of the Chief Judge of the First Judicial Circuit of
2 Maryland, and Mrs. E. McMaster **Duer**,, and I should
3 appreciate it if the delegates of this Convention will give
4 them a warm welcome to this Convention. (Applause.)

5 THE CHAIRMAN: For what purpose does Delegate
6 Boileau rise?

7 DELEGATE BOILEAU: I have an inquiry of the
8 Chair.

9 THE CHAIRMAN: State the inquiry.

10 DELEGATE BOILEAU: As I understand the motion
11 that we just passed it would be possible to have an
12 appointed comptroller. The only requirement is that the
13 comptroller be mentioned in the Constitution. Am I
14 correct?

15 THE CHAIRMAN: That is correct.

16 Delegate Storm.

17 DELEGATE STORM: A point of personal
18 privilege, Mr. Chairman.

19 THE CHAIRMAN: State the privilege.

20 DELEGATE STORM: I would like to invite the
21 attention of the Assembly to the presence in the gallery

1 behind the Chair of Senator **Smeltzer** from Frederick
2 County. I would also like to record the fact that
3 before we started recognizing people in the gallery, the
4 President of the Maryland Federation of Women's Clubs
5 attended fairly regularly, and she is sick and unable
6 to come now, and probably will not get back to the
7 Convention before it adjourns.

8 So in recognizing Senator S
9 I would also like to recall that my wife is here.

10 THE CHAIRMAN: Delighted to have them with us.
11 (Applause.)

12 THE CHAIRMAN: Before the committee rises,
13 the Chair desires to announce so that there will be
14 no misunderstanding that the next item for consideration
15 when the Committee of the Whole resumes will be Recom-
16 mendation 3, dealing with the treasurer. After that is
17 disposed of we then revert to Recommendation 1, then to
18 Recommendation 4, then to Recommendation 5.

19 Delegate Sherbow.

20 DELEGATE SHERBOW: Mr. Chairman, I would like
21 to make this inquiry of the Chairman: In the light of

1 the compromise dealing with the Board of Public Works
2 and a person to be appointed by the General Assembly, and
3 in view of the spirit of compromise that has brought that
4 about, I would like to invite the attention of the
5 Chairman of the Committee and the Chairman of the
6 Committee now assembled here of the Whole, to whether or
7 not we wouldn't do better if we were to postpone con-
8 sideration of item Number 3 dealing with the state treasur-
9 er until after we have disposed of the question of the
10 compromise dealing with the Board of Public Works, and a
11 person to be appointed by the General Assembly?

12 It seems to me that that would be a very
13 practical solution to what may become a troublesome
14 and difficult problem.

15 THE CHAIRMAN: The Chair understood from the
16 Chairman of the Committee that the recommendation of the
17 Committee or the understanding of the Committee on the
18 Executive Branch was that points, or Recommendations 2
19 and 3, would be voted on before Recommendation 1 or the
20 proposed amendment to it was reconsidered.

21 However, the Chair will suggest that Delegate

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Morgan confer with Delegate Powers and the Chairman over the lunch recess..

Any further announcements?

(No response.)

Delegate Powers.

DELEGATE POWERS: Mr. Chairman, I move the Committee of the Whole rise for the purpose of taking a recess.

THE CHAIRMAN: Is there a second?

(The motion was seconded.)

THE CHAIRMAN: All in favor signify by saying Aye; contrary, no. The Ayes have it. It is so ordered.

(The mace was replaced by the Sergeant at Arms.)

(Whereupon, at 1:06 p.m. the Committee of the Whole rose, and the Convention reconvened.)

THE PRESIDENT: The Convention will please come to order.

On behalf of the Committee of the Whole, the Chair reports that the Committee has had under consideration Committee Report Number EB-1, still has it under consideration and desires leave to sit again.

Anyone else who was not present at roll call

1 this morning may indicate their presence now in the
2 supplemental roll call.

3 The Clerk will record the supplemental roll
4 call.

5 Are there any announcements by committee
6 chairmen which must be made before lunch recess? If
7 not, the Chair recognizes Delegate Powers.

8 DELEGATE POWERS: Mr. President, I move we
9 recess until 2:30.

10 THE PRESIDENT: Is there a second?

11 (The Motion was seconded.)

12 THE PRESIDENT: All in favor signify by saying
13 Aye; contrary, No. The Ayes have it.

14 (Whereupon, at 1:07 p.m. the Convention was
15 recessed, to reconvene at 2:30 p.m., the same day.)
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AFTERNOON SESSION

November 28, 1967 - 2:30 p.m.

THE PRESIDENT: The Sergeant at Arms will
clear the aisles and close the doors.

The Convention will please come to order.
Roll call.

(Whereupon the roll was called.)

THE PRESIDENT: Has every delegate answered
roll call?

The Clerk will recall the roll call.

The Convention is in session.

The Chair recognizes Delegate Powers.

DELEGATE POWERS: Mr. President, I move
the Convention resolve itself into a Committee of the
Whole to resume consideration of the orders of the day.

(The motion was seconded.)

THE PRESIDENT: All in favor signify by saying
Aye; contrary, No. The Ayes have it, and it is so
ordered.

(Whereupon, at 2:35 p.m. the Convention
resolved itself into the Committee of the Whole.)

(The mace was removed by the Sergeant at Arms.)

1 THE CHAIRMAN: The Committee of the Whole
2 will please come to order.

3 For what purpose does Delegate Pullen rise?

4 DELEGATE PULLEN: I hope I am in order. I would
5 like to recognize three neighbors of mine from Catonsville,
6 Mr. and Mrs. Dewey Zimmerman, and Mrs. Mary Jane Joy.
7 (Applause.)

8 THE CHAIRMAN: We are delighted to have them
9 here.

10 The Chair recognizes Delegate Cardin.

11 DELEGATE CARDIN: Mr. Chairman and fellow
12 delegates , it is with pleasure that I announce in the
13 rear gallery the Chief Judge of the Orphan's Court of
14 Baltimore County, Judge Suzanne Mensh and Mrs. Leonard
15 Goodman.

16 I hope we can give a welcome and that they
17 will be enlightened by our deliberations. (Applause.)

18 THE CHAIRMAN: Delegate Boyce.

19 DELEGATE BOYCE: Apparently the League of Women
20 Voters has been here and not recognized. I would like
21 everyone to give them a hand for having been here quite

1 continually with us. (Applause.)

2 THE CHAIRMAN: The Chair wishes to recognize
3 the nine members of the Brandeis University Women's
4 Committee of the American Government Study Group, Mont-
5 gomery County, in the District of Columbia; delighted
6 to have them also. (Applause.)

7 Any further announcements?

8 Delegate Fornos.

9 DELEGATE FORNOS: Mr. President, I would like
10 to recognize in the gallery a great public servant, Harry T.
11 Krause. He has been a civic leader in Annapolis for many
12 years.

13 THE CHAIRMAN: Any further announcements? If
14 not, we will proceed to a consideration of the third
15 recommendation of the Committee on the Executive Branch
16 contained in Committee Report EB-1. The Chair would like
17 to state that it conferred with Delegate Morgan and
18 Delegate Powers at the noon recess and understands that
19 the Committee on the Executive Branch in agreeing
20 to the compromise did so with the understanding that
21 Items 2 and 3 would be voted on as they were reached.

The Chair recognizes Delegate Morgan to

1 present the committee's report.

2 DELEGATE MORGAN: Mr. Chairman.

3 THE CHAIRMAN: Delegate Morgan.

4 DELEGATE MORGAN: The committee report with
5 respect to the treasurer is going to be presented by
6 the Vice-President of the Committee, the Honorable E.
7 Dale Adkins.

8 THE CHAIRMAN: The Chair recognizes Delegate
9 Adkins to present the report of the committee.
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1 Mr. Chairman, and Members of the Committee: At
2 the risk of being corrected by my more erudite friends,
3 I feel a little like King Canute who bade the waves to
4 be still. The waves apparently will not be still. The
5 arguments relating to the Treasurer are basically
6 the same as those relating to the Comptroller. I
7 think it should not have extensive elaboration or debate.

8 There are some significant differences to which
9 I would like to invite your attention. We have had many
10 references to the 16 year old office of Comptroller.
11 Reference to the debates of the 1851 Reform Convention
12 indicate that in fact a Comptroller was put in the
13 Constitution not as a check on the Governor, but indeed as
14 a check on the Treasurer in order that the State might
15 be assured that there would be two signatures on every
16 check. It seems to me unnecessary to have two
17 constitutional officers to provide for dual signatures or
18 checks in the state of Maryland in this day of modern,
19 electronic data processing.

20 The office of Treasurer assumes its constitutional
21

1 significance only as a result of being on the
2 Board of Public Works. I do not think that it can be
3 successfully argued that to control the funds of
4 Maryland that the people need to have two
5 elected officials within the executive branch to
6 provide adequate protection against the corruptness of
7 future chief executives of this state.

8 I suggest to you that if the office of
9 Treasurer elected by the General Assembly is to
10 be continued, it should be done with full knowledge that,
11 in fact, the treasurer is an appointed official. He is
12 appointed under normal circumstances, and I use that
13 term quite advisedly "under normal circumstances" by the
14 Chief Executive of this State subject to the election, if
15 you choose to call it that, of the General Assembly of
16 Maryland.

17 I think is also safe to say that the
18 treasurer does not either purport to nor does he in fact
19 represent the General Assembly of Maryland because
20 witness after witness testified before our committee
21

1 that once elected the contact between the treasurer and
2 the General Assembly was absolutely nil.

3 Maryland has been quite fortunate in the past in
4 having extremely competent high-class men as their
5 treasurers. This I suggest is not because they have been
6 chosen by the General Assembly, it is because the
7 governors of this state in the exercise of their best
8 judgment have asked the legislatures to confirm intelli-
9 gent, competent, high-class men.

10 No man served this state any better than
11 Hooper S. Miles. No man is serving this state any
12 better than its present treasurer, but there is no
13 substantial justification in continuing this office as
14 an office of Constitutional dimension.

15 This body as of this moment has elected to
16 include an elective comptroller. I would suggest since
17 these two offices constitute a diminishing power, to that
18 extent we are making erroneous decisions.

19 I would urge the committee to eliminate the
20 office of treasurer as a constitutional office, leaving
21 it up to either the executive or General Assembly to

1 provide such safeguards for the control of the funds of
2 this state as seem reasonable and proper under the
3 circumstances.

4 I am open to questions.

5 THE CHAIRMAN: Are there any questions of
6 the Vice Chairman for purposes of clarification?

7 There are apparently no questions. The
8 Chair calls on Delegate James to present the report of
9 the minority.

10 DELEGATE JAMES: Mr. Chairman and fellow
11 delegates, the office of state treasurer is a Constitu-
12 tional office of high dignity; a person filling the office
13 is elected by both houses of the Assembly sitting together
14 for a four-year term.

15 Our experience has been that the state treasur-
16 er's office doesn't change. We have had only three since
17 1920: John M. Dennis, elected in 1920, Hooper S. Miles
18 in 1935, John A. Leutkemeyer in 1963.

19 The functions of the office are as follows:
20 the treasurer deposits and disburses the state funds.
21 There are 22 acting bank accounts in the state. He must

1 account for all of the outstanding debt and provide for
2 payment which I might say, is a gigantic job.

3 He invests temporary cash surpluses in appropri-
4 ate investments. He is the custodian of investments,
5 deposits and pledged securities. He is an agent for the
6 sale of bonds which is an area in which a great deal of
7 expertise is required in the fiscal world.

8 He is an agent for insurance purposes, how
9 much insurance to buy, and recommends to the General
10 Assembly as to what insurance coverage should be needed.
11 He further keeps all records so that they may be properly
12 audited. He serves as an ex officio ^{member of the} Board of Estimates,
13 trustee for the state retirement system, a member of the
14 Maryland Industrial Development Financing Authority,
15 serves on the University of Maryland Board of Regents, on
16 the State Board of Canvassers, and of course he is on the
17 Board of Public Works as a legislative representative.

18 Now, the Board of Public Works under the
19 proposed compromise under the new name Interdepartmental
20 Board of Review is going to require the legislature to
21 name a person to represent its interest. This person

1 will be more of an advisor, observer, a person who will
2 be there to see that the public is informed, that the
3 legislature is informed, and that the governor is in-
4 formed, concerning public matters, what goes across the
5 desk of the Board of Public Works, under the new name.

6 Now, this Board of Public Works has numerous
7 functions; to borrow money to meet temporary deficits,
8 to fix interest rates and to sell State bonds, to let
9 contracts for expenditure of state funds, to approve or
10 disapprove leases, to promulgate rules and regulations
11 covering business administration in various state agencies,
12 to sell real or personal property, to transfer property
13 from one governmental agency to another, and to approve
14 or disapprove the creation of new jobs not in the budget.

15 We in the legislature want to know if we have
16 someone that we can depend on in that job. The arguments
17 for the present system roughly run as follows: One, ex-
18 perience shows that it provides us with an experienced
19 man of honor and trust to perform the multiple duties
20 of state treasurer. Two, it provides a time-tested
21 method for securing honesty in the handling of public funds.

1 The supreme confidence in a computer may be present in
2 some areas, but there has been no machine which has been
3 not
4 invented which can/be tampered with or circumscribed by
5 the ingenuity of man.

6 The office provides continuity in public
7 finance which is extremely valuable to both the governor
8 and the legislature. Four, it provides a vehicle to whom
9 the legislature can delegate certain administrative func-
10 tions with confidence.

11 There are many functions which the legislature
12 has delegated to the Board of Public Works only because
13 it has confidence in the hard quality of that Board and
14 only because it knows it has a representative there
15 upon whom it can rely to exercise good judgment.

16 Five, it provides a relatively non-political
17 administration of the office of treasurer. Now, I would
18 like to quote Governor Agnew, and I am quoting directly
19 from his address to the Full Assembly of the Constitutional
20 Convention, State House, Annapolis, Maryland, at 2:00
21 p.m., September 29, 1967.

The Governor made this statement: "In my

1 opinion the Board of Public Works should continue but
2 be reconstituted." "I think we are about to comply. "The
3 Board provides a forum for public scrutiny and presents
4 an opportunity for the expression of legislative views on
5 significant decisions. I believe the State Treasurer, an
6 adjunct of the legislative arm, should continue as the
7 representative of the General Assembly."

8 Now here is a governor who works with the
9 treasurer all the time expressing his opinion about
10 this office. I think the legislature would like to
11 continue to elect the treasurer.

12 The fortunate thing about the election of the
13 treasurer, although it has been said that the governor
14 makes a recommendation to the legislature, generally
15 speaking when the governor and legislature can agree
16 upon the appointee and the person elected, he is going
17 to be a man of high caliber.

18 Let us look at the New Jersey experience back
19 in the forties, when Governor Hoffman had the appoint-
20 ment of all the fiscal officials. He took thousands of
21 dollars, these people conspired together and took

1 thousands of dollars from the treasurer. I don't
2 know the exact figure, but it is my recollection it ran to
3 a million or better.

4 The state did not find out about this until
5 Governor Hoffman had been dead. It was several years
6 after he left office. It was never discovered.

7 If you permit a situation where the governor
8 and his appointees have full control over all of the fis-
9 cal affairs of the state, you run the risk of a situation
10 developing which has never occurred in Maryland.

11 Now, you may say we are going to have honest
12 officials and I think we do in the main. I hope so.
13 My observation is that we do. But nevertheless, when
14 Edgar Bengen said to Charley McCarthy, "You wouldn't
15 cheat the friends who trust you" ^{Charley} and / said "Well, those
16 are the only ones you can cheat".

17 We want to have a system which provides the
18 necessary scrutiny of public finances so if there be
19 any temptation whatsoever the system will overcome the
20 temptation. The retention of the treasurer in the Constitu-
21 tion provides a logical office for legislative designation

1 to this Board of Administrative Review or Interdepartmental
2 Review.

3 If we do place a **treasurer** in the Constitution
4 under Section 4.23, the treasurer would be appointed as
5 an executive official and certainly the legislature would
6 never elect an official of the executive department to
7 act as the legislative representative on the Board of
8 Public Works, so that the time-honored system of providing
9 the treasurer as the legislative representative on the
10 administrative board dealing with court matters would be
11 eliminated.

12 We have a practical and pragmatic association.
13 The governmental theorists look and say it should not work
14 this way, because this is wrong in theory. I say to you
15 that the Constitutional nature of the position draws good
16 men.

17 How could we possibly obtain more highly
18 qualified persons for this highly qualified office than
19 we have had in Maryland's experience?

20 If the treasurer becomes a mere appointee of
21 the governor, certainly you are not going to get the type

1 of individual who has a high standing in the community,
2 so you run the risk of having the appointment of a politi-
3 cal person. And when this happens, the man who does the
4 work really is Chief Deputy and the politician is a
5 figure-head.

6 As my brother Delegate Adkins said, Maryland
7 has been fortunate in having high class treasurers. Now
8 this is a compliment to the present system. The reason
9 is that the treasurer has Constitutional dignity. He
10 is elected by the legislature. It is an honor to serve
11 the office. The monetary rewards are incidental be-
12 cause the treasurer has only been paid \$2500. Maryland
13 gets the best at bargain prices.

14 I urge this Convention to adhere to the
15 present system and to place the state treasurer in the
16 Constitution so that he will be available to act as a
17 legislative representative if the legislature so de-
18 termines.

19 THE CHAIRMAN: Are there any questions of the
20 minority spokesman?

21 Frank Robey.

1 DELEGATE ROBEY: You mentioned the fact that
2 the treasurer is indeed the representative of the
3 legislature and he therefore sits on the Board of Public
4 Works in that position.

5 I would wonder if you could explain to me now
6 in your position as President of the Senate the intri-
7 cacies involved in how the treasurer communicates with
8 the leadership of the legislative branch and how the
9 treasurer reports back to the General Assembly the
10 actions he has taken on the Board of Public Works?

11 THE CHAIRMAN: Delegate James.

12 DELEGATE JAMES: Well, communication is by
13 telephone, generally speaking, and the minutes of the
14 Board of Public Works are a matter of public record.
15 They are available.

16 THE CHAIRMAN: Delegate Robey.

17 DELEGATE ROBEY: The second question I have
18 in this area, usually it is the practice that the
19 treasurer is the President or head of a large bank in
20 Baltimore. Do you see any conflict of interest in the
21 fact that he has this dual capacity?

1 THE CHAIRMAN: Delegate James.

2 DELEGATE JAMES: I don't see any conflict.

3 One of the problems of governmental life is that if you
4 obtain a person who knows something about a subject in
5 public life, he is always victim of the charge that there
6 is a conflict of interest.

7 If you put in the office of insurance
8 commissioner one who has knowledge of it, he is charged
9 with having conflict of interest. I think this is an
10 unfortunate thing.

11 THE CHAIRMAN: Delegate Robey.

12 DELEGATE ROBEY: Thank you.

13 THE CHAIRMAN: Delegate Boyce.

14 DELEGATE BOYCE: Delegate James, you have
15 spoken to the effect that the present man is qualified and
16 the two predecessors were. You say you are getting
17 him for a very cheap price. I wonder if you are really
18 accurate? Has there been any survey made by the legis-
19 lature or the governor or anyone in the state of Maryland
20 as to what the loss of interest was if the bank balances
21 were put out in government securities?

1 THE CHAIRMAN: Delegate James.

2 DELEGATE JAMES: I served on the legislative
3 commission which in reviewing this situation found that
4 investment in government securities was a losing proposition
5 and we would be better off to diversify state investment
6 and as a consequence, with the cooperation of the
7 treasurer and legislature, we invested the interest on
8 state investments in the retirement system saving the
9 state several million dollars year.

10 So investment of government securities would
11 not necessarily mean a higher rate of income.

12 THE CHAIRMAN: Delegate Robey.

13 DELEGATE ROBEY: You haven't answered my
14 question yet.

15 THE CHAIRMAN: Delegate James.

16 DELEGATE JAMES: I thought I did.

17 THE CHAIRMAN: Delegate Robey.

18 DELEGATE ROBEY: Has any study been made
19 what the cost was to the citizens of Maryland to get
20 such a qualified person by taking bank deposits and
21

1 investing them in government bonds?

2 THE CHAIRMAN: Delegate James.

3 DELEGATE JAMES: No, but I would understand--
4 it would be my view that it would be the function of the
5 treasurer to keep as many of the accounts invested as
6 possible. There are 22 bank accounts. You have to decide
7 how fickle you are going to be.

8 I don't know that any particular legislative
9 investigation has been made of this point. It may
10 be that more funds in fact could be invested. However, that
11 would be a decision that would be made by the treasurer.

12 THE CHAIRMAN: Delegate Robey.

13 DELEGATE ROBEY: Thank you, Delegate James.
14 That is an answer.

15 I would like to ask you if you can visualize
16 in the new Board we have a better man than a large city
17 banker to be the representative of the legislature, on
18 this new type of Board we are talking about, in place of
19 the Board of Public Works.

20 THE CHAIRMAN: Delegate James.

21 DELEGATE JAMES: If you are speaking of this

1 particular moment, I can't. I would not want to say.
2 If you searched Maryland over you could not possibly get
3 a better man, but year in and year out over the long
4 term of things, the chances are you would get a man
5 without the broad qualifications, experience and position
6 in the community that the present system provides.

7 It is a very grave risk that you might have
8 a lesser quality.

9 THE CHAIRMAN: Delegate Robey.

10 DELEGATE ROBEY: Would you say you were
11 opposed to the possible auditor being selected by the
12 General Assembly to sit on this type of Board?

13 THE CHAIRMAN: Delegate James.

14 DELEGATE JAMES: I am not against this
15 Constitutional Convention doing anything. I assisted in
16 providing for a possible auditor even if this is de-
17 feated. This will be enacted by the next General
18 Assembly.

19 THE CHAIRMAN: Delegate Robey.

20 DELEGATE ROBEY: Would you be unalterably
21 opposed to that man replacing the treasurer to sit on this

1 Board?

2 THE CHAIRMAN: Delegate James.

3 DELEGATE JAMES: I am not going to say I will
4 be unalterably opposed to anything, because lots of times
5 I am wrong and I reserve the right to correct an
6 incorrect decision.

7 I would say that probably the post-auditor
8 should not sit on this Board. I don't think the post-
9 auditor should be in an administrative position. He
10 should be what I would like to call a critic at large, and
11 a critic cannot be in the position of a reformer.

12 THE CHAIRMAN: Delegate Robey.

13 DELEGATE ROBEY: Thank you. I appreciate that.
14 I appreciate the fact that I too, am wrong quite fre-
15 quently. I worry about this office, because I see no
16 need for it to go into the Constitution.

17 Can you explain to me that need? I didn't get
18 that in your talk.

19 THE CHAIRMAN: Delegate James.

20 DELEGATE JAMES: I feel that Section 4.23, if
21 I am not mistaken, of the Committee's recommendation, which

1 reads "All personnel in the state government not specifi-
2 cally dealt with in this article shall be appointed and
3 may be removed " -- appointment would be appointment by
4 the executive. Therefore, the legislature could not
5 necessarily designate the treasurer as a representative
6 on any administrative board, because he would be part
7 of the executive branch.

8 THE CHAIRMAN: Delegate Robey.

9 DELEGATE ROBEY: You are saying he ought to
10 be in the Constitution so he could be appointed by the
11 legislature?

12 THE CHAIRMAN: Delegate James.

13 DELEGATE JAMES: There is a big difference.

14 DELEGATE ROBEY: What is the difference.

15 THE CHAIRMAN: Delegate James.

16 DELEGATE JAMES: The election is a collective
17 process involving a meshing of numerous views to
18 achieve a single result.

19 The appointive power is one exercised by a
20 single individual. It involves the exercise of executive
21 authority as distinguished from legislative authority.

1 THE CHAIRMAN: Delegate Robey.

2 DELEGATE ROBEY: Then you disagree with the
3 testimony of the late Preston Lane before the Constitution-
4 al Commission when he said "I don't see much sense in
5 having the legislature elect the treasurer. The
6 treasurers are more responsible to the governor than the
7 legislature."

8 THE CHAIRMAN: Delegate James.

9 DELEGATE JAMES: That would be a logical
10 conclusion.

11 THE CHAIRMAN: Delegate Robey.

12 DELEGATE ROBEY: You disagree, I suspect, with
13 Governor Tawes in his appearance at the Constitutional
14 Convention when he said "I think the state treasurer
15 should be appointed by the governor, maybe with the advice
16 and consent of the Senate."

17 THE CHAIRMAN: Delegate James.

18 DELEGATE JAMES: If that is Governor Tawe's
19 opinion, which I don't believe it is, I think you are using
20 unfair tactics.

21 THE CHAIRMAN: Delegate Robey.

1 DELEGATE ROBEY: I don't know what unfair tac-
2 tics are.

3 THE CHAIRMAN: Delegate James.

4 DELEGATE JAMES: I think you are putting in
5 something which he later changed.

6 THE CHAIRMAN: Delegate Robey.

7 DELEGATE ROBEY: I think a lot of people
8 are doing a lot of changing, but I wanted to get straight
9 whether you agreed with that or not.

10 Thank you very much.

11 THE CHAIRMAN: Delegate Sickles.

12 DELEGATE SICKLES: With respect to your
13 response to Delegate Robey concerning the practice we have
14 had in this state of allowing a gentleman who is a
15 member of a banking firm to hold this office, your
16 answer was that we should not give up this experience. I
17 think I would go along with this, that we have, as you
18 indicated, and I quote you -- you said we should have
19 an experienced man of honor and trust. I assume that we
20 want a paragon of honesty and I think the incumbent
21 certainly is and I will not quarrel with any of the

1 treasurers that I have known about, and I assume that
2 they are.

3 I wonder if we don't establish a principal
4 in that we allow a public servant handling state funds
5 to put the funds in his bank and then we allow him to
6 participate in awarding contracts, and if we allow the
7 first principal to stand, then isn't the necessary result
8 of that principal that a contract could be awarded to
9 one of the members of the Board or to a firm in which
10 they have an interest, because the principal seems to
11 be that it is all right to have the state doing business
12 with a firm of the officer involved.

13 DELEGATE JAMES: Well, if the treasurer
14 deposits funds on a pro-rated basis on a non-discrimina-
15 tory basis in qualified banks and I understand this is done,
16 there is no favoritism and why should a person be
17 discriminated against just because he is in public
18 office? This is the vicious thing I am against,
19 disqualifying a man because he happens to have certain
20 private interests.

21 THE CHAIRMAN: Delegate Sickles.

1 DELEGATE SICKLES: I don't mean to belabor
2 that point, but I don't think the response goes to my
3 basic question, mostly to the impression that is created.

4 I would assume they would not give contracts
5 to themselves. I have no evidence that they have. I
6 think you have established the principal--

7 DELEGATE JAMES: I don't think this principal
8 has been established. I am a member of the legislature
9 and I am a practicing member of the Bar. The question
10 is, should I as a member of the Bar accept any legal
11 work, no matter how small a percentage from the state,
12 because I am a member of the legislature.

13 The attorney general's rule is perfectly pro-
14 per. Now, should any person in public office almost
15 avoid any contact with government simply because he is in
16 public office, this is a broad question.

17 THE CHAIRMAN: Delegate Sickles.

18 DELEGATE SICKLES: It did raise another question
19 in my mind. Wasn't there some practice for some time
20 of awarding insurance commissions to members of the
21 state legislature for no services performed? Wasn't that

1 actually within the discretion of the state treasurer
2 to make that award?

3 THE CHAIRMAN: Delegate James.

4 DELEGATE JAMES: It is under the Board of
5 Public Works, I believe, state treasurer. I think you
6 are right. It is not on the basis of a formula as I
7 understand it. It is awarded to people who are in the
8 insurance business on the basis of total volumes of
9 insurance they write in the state and then I think they
10 get the percentage which the total volume of their work,
11 which the percentage of their work bears to the total
12 percentage.

13 I think that is the way it is done.

14 THE CHAIRMAN: Delegate Sickles.

15 DELEGATE SICKLES: Do you think this is a
16 desirable practice of the state legislature for no work
17 performed?

18 THE CHAIRMAN: Delegate James.

19 DELEGATE JAMES: I am not defending them.

20 THE CHAIRMAN: Delegate Sickles.

21 DELEGATE SICKLES: Thank you.

1 THE CHAIRMAN: Delegate Raley.

2 DELEGATE RALEY: Senator James, something that
3 has concerned me is the setting up of the treasurer --
4 just what are his duties going to be? You have got the
5 treasurer investing state funds, you have the Board of
6 Public Works selling bonds, you have the comptroller
7 managing the finances, and this has always given me some
8 difficulty about this lack of coordination and management,
9 and I know that you have probably given some thought to
10 this.

11 What do you consider would be the duties of the
12 treasurer on coordinating some of these activities that
13 are so very multiple which can lead to some serious
14 problems?

15 I would like to know how you see if they put in
16 the Constitution that there is going to be a treasurer,
17 how do you see his duties continue as they are now? Is
18 there going to be a reorganization or a restudy by the legis-
19 lature so some of these activities can be allocated pro-
20 perly?

21 THE CHAIRMAN: Delegate James.

1 DELEGATE JAMES: I think this would have to
2 depend upon a reorganization which we are providing, the
3 reorganization system which we are providing in the
4 executive Article.

5 Much has been said about the power of the
6 governor from a fiscal standpoint. The governor of
7 Maryland is a very, very powerful individual. Anyone
8 who serves the state governor must recognize that the
9 theorists, and I don't want to point any fingers at the
10 theorists because they are very valuable and often far
11 ahead of the politicians -- they don't understand the
12 power of the Maryland governor.

13 We are adding to that power the power to permit
14 him to select the head of all principal departments.
15 These department heads must serve at the pleasure of
16 the governor. We are giving him full powers of re-
17 organization so that added to his fiscal powers we are
18 giving him all of these administrative powers.

19 Now, if the compromise is developed, then at
20 least we will be able to salvage a public Board, a Board
21 of Administration, call it what you will, across which

1 important decisions will go.

2 With reference to the treasurer, I would
3 assume that his functions which I listed related to de-
4 post and disbursement of state funds and 22 active state
5 banks would be maintained, he would continue with his
6 accounting for all oustanding debt and for the payment.

7 That is an expanding function because our
8 ability to incur debt appears to exceed almost any of our
9 other talents in modern America. Investing of temporary
10 cash surpluses, custodian of investments, deposits, and
11 pledged securities. He is agent for the sale of bonds,
12 agent for insurance purposes. When you come to awarding
13 insurance, I agree with Mr. Sickles. Going into this is
14 in order. Whether this is a proper function would be a
15 matter of intense scrutiny and review.

16 The Treasurer keeps all records for audit
17 purposes. His Ex Officio functions might be continued
18 as a member of the retirement system, and I can't see
19 much reason for keeping him on the Board of Canvassers.
20 That is his present function, and he has been put there
21 because it has been recognized in Maryland history that

1 here you have a reliable individual, a person agreed
2 upon normally by the government and legislature as an
3 outstanding individual whom everyone can trust. And
4 that is why he has been placed on the Board.

5 And his functions on the Administrative Board
6 should be continued. I would think generally speaking the
7 treasurer would be doing much of what he is doing today
8 with possibly a little closer alliance with the General
9 Assembly.
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1 THE CHAIRMAN: Delegate Raley.

2 DELEGATE RALEY: Going back to this, which
3 I think the other thing is kind of minor, but the
4 investment of state funds and the management of state
5 money is a very, very important thing. Every tax dollar
6 that is spent is involved here and how we can get the
7 most efficiency from it is most important and how we set
8 up the structure of this constitution.

9 DELEGATE JAMES: I agree with you one hundred
10 per cent.

11 DELEGATE RALEY: How are we going to have that
12 managed by one way, in one simple location because I
13 think it is important that you have got four people or four
14 branches all off managing the money.

15 I know we cannot write it into the Constitution
16 but how we set the structure up is important.

17 DELEGATE JAMES: The management of the money
18 is in the hands of the Treasurer. In the instances of
19 the retirement funds we have an investment committee.

20 DELEGATE RALEY: He does make the investment
21 of state funds which is very significant.

1 DELEGATE JAMES: Only surplus state funds.

2 THE CHAIRMAN: Is there a further question,

3 Delegate Raley?

4 Are there any further questions of the minority
5 spokesman.

6 DELEGATE BOTHE: Delegate James, how much of
7 the time of the State Treasurer does he spend on State's
8 business?

9 DELEGATE JAMES: That is very difficult to say.
10 If you asked me how much time I spend on State business,
11 I couldn't tell you. It is most of the time, although
12 it is hard to convince anyone of that.

13 I just don't know.

14 DELEGATE BOTHE: He does, however, hold down a
15 full-time occupation in private life.

16 DELEGATE JAMES: It is possible to hold three
17 sometimes. I am a lawyer and politician and a farmer.

18 DELEGATE BOTHE: Would the Treasurer you ask us
19 to retain in the Constitution also be a part-time
20 employee of the State?

21 DELEGATE JAMES: I would say he could be.

1 Constitutional officers, generally speaking, are not
2 barred from having other occupations and I could say
3 that he probably could be. The alternative, of course,
4 is to get someone who is political in nature and who
5 needs the job, has to have it because he has to have a
6 certain salary to live at a certain standard of living and
7 you get an entirely different type of individual when
8 you go to that.

9 DELEGATE BOTHE: Don't you think that having
10 an individual in this kind of office where he simultaneously
11 and officially engages in activities of a profit-making nature
12 is an invitation to conflict of interests?

13 DELEGATE JAMES: I think everyone in public life
14 has that problem of conflict of interest.

15 THE CHAIRMAN: Delegate Adkins.

16 DELEGATE ADKINS: In your capacity as President
17 of the Maryland Senate, with what frequency during the
18 last few years have you had occasion to consult with or
19 to be queried by or to ask questions of the State
20 Treasurer?

21 DELEGATE JAMES: I would say about twice a

1 month.

2 DELEGATE ADKINS: Is this at your initiative or
3 at his?

4 DELEGATE JAMES: I would say it would be about
5 fifty-fifty.

6 DELEGATE ADKINS: Are these consultations based
7 upon the proper exercise of his job?

8 DELEGATE JAMES: It is hard to answer. I
9 assume so.

10 THE CHAIRMAN: Delegate Adkins.

11 DELEGATE ADKINS: I think I quote the record,
12 the Treasurer testified he considered himself a completely
13 independent official responsible to no one.

14 Would you agree that is the case?

15 DELEGATE JAMES: I would say legally.

16 DELEGATE ADKINS: Do you think it is wise
17 to have an elective official with the power of the
18 existing Treasurer responsible to no one?

19 DELEGATE JAMES: I think it has certain advantages.

20 DELEGATE ADKINS: Let me ask you a final question.
21 If the Treasurer is not a member of the Board of Public

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1 Works, do you consider that the safekeeping of the money
2 which is basically the Treasurer's function is sufficiently
3 important to require constitutional-elected status?

4 DELEGATE JAMES: Yes, yes, my answer is yes.

5 DELEGATE ADKINS: Despite the fact he would not
6 be a Member of the Board of Public Works?

7 DELEGATE JAMES: When you put the two together,
8 it makes it much stronger. The system has produced honorable
9 people over the period of years. The slightest question
10 of state funds being handled in an honorable manner
11 is sufficient to justify continuation of the system.

12 DELEGATE ADKINS: Do you also feel that it is
13 necessary to have the present procedure for the issuance
14 of state vouchers? Do you feel that we have to have
15 two signatures on the check in order to keep the Comptroller
16 and Treasurer each as you determine it honest?

17 DELEGATE JAMES: I think it is a good idea.

18 THE CHAIRMAN: Are there any further questions
19 of the minority spokesman?

20 DELEGATE PULLEN: Mr. Chariman, I would like
21 to ask you if you do not think it wise that someone, either

1 in the majority or minority committee report to this
2 Convention the power of the Governor over the State
3 finances, we have talked about division of power for some
4 time and yet no one has made a definitive statement
5 of the exact duties, power and authorities of the
6 Governor in respect to all funds.

7 It seems to me that is the point of departure
8 when we begin to talk about the duties and responsibilities
9 of comptrollers and treasurers and so on.

10 Frankly, I agree with your point of view but I
11 do believe you would clarify things and help us if
12 someone would spell it out.

13 DELEGATE JAMES: We are going into state finances
14 very shortly. At that time this Convention is going
15 to be educated concerning the powers of the Government
16 in the fiscal field. They are simply enormous.

17 DELEGATE PULLEN: Can we make a tentative decision
18 until we know that? We are doing something in a vacuum.

19 DELEGATE JAMES: The Governor of Maryland has
20 an ironclad clasp on the fiscal affairs of the State.
21 I am going to limit my remarks to that statement.

1 THE CHAIRMAN: Are there any further questions
2 of the minority spokesman?

3 The Chair hears none.

4 The Chair would like to address two questions
5 to both the minority spokesman and the vice chairman
6 to see if there is any disagreement on the points to
7 avoid confusion in the debate.

8 Is the Chair correct in assuming that both
9 the minority and majority of the committee agree if
10 there is no provision in the constitution with respect
11 to a Treasurer that the selection of the Treasurer
12 would be under 4.23 of the Committee Recommendation?

13 DELEGATE JAMES: I am expressing my opinion
14 and I have not heard anyone disagree with that.

15 THE CHAIRMAN: Could the Chair ask the Vice
16 Chairman of the Committee if he agrees that that is the
17 section that would be applicable in the absence of
18 a provision in the constitution with respect to a
19 Treasurer.

20 DELEGATE ADKINS: Yes, sir, assuming only that
21 he would not end up as the head of a fiscal department.

1 THE CHAIRMAN: A principal departments.

2 DELEGATE ADKINS: Yes; otherwise, I think
3 Section 4.23 would control.

4 THE CHAIRMAN: The Chair would like to ask
5 this further question both of the minority spokesman
6 and the Vice Chairman. If that is so, and if there is
7 no provision in the constitution with respect to the
8 Treasurer is there a dispute as to whether the legislature
9 would have power to determine the selection of the Treasurer
10 under 4.23:

11 Delegate James.

12 DELEGATE JAMES: I am not sure of the answer to
13 that question, I feel the way it is phrased, you would
14 have objection to the appointment. If we change the
15 word to selected, this would mean not only in this
16 intance,, but in any instance, the legislature could
17 provide a method of selection, maybe out side of the guber-
18 natorial powers.

19 It might mean that the legislature could really
20 name people in a bill the way it can now but I do not
21 think the committee or Convention would want to do that.

1 Can the Vice Chairman of the Committee say
2 whether he agrees with that interpretation?

3 DELEGATE ADKINS: I should take it the word
4 "appointed" in 4.23 would mean appointment under such
5 rules as the legislature adopted for its own designated
6 individual which to me would indicate so long as the
7 Treasurer is not the head of a principal department,
8 they could designate that he could be elected by the legis-
9 lature either in a joint session or by individual action
10 in both houses.

11 I am not sure that is responsive to the Chair's
12 question.

13 DELEGATE JAMES: I am not sure that is right,
14 either. I do not think it is, as a matter of fact.

15 THE CHAIRMAN: I gather the minority and majority
16 do not agree on that interpretation of Section 4.23. Any
17 further questions of the minority spokesman?

18 DELEGATE MALKUS: Mr. President, I do not know
19 whether this question should be directed to the majority
20 or the minority, but I would like to know -- this question
21 is confusing to me and apparently it is to the Vice

1 Chairman of the committee and I have not heard from
2 the Chairman.

3 It is suggested that we contact the Attorney
4 General's office. Have we got an opinion as to what
5 we are talking about from the Attorney Generals Office?
6 I direct it to Senator James, the Vice Chairman, or the
7 Chairman, whoever wants to answer it.

8 THE CHAIRMAN: I am not sure the Chair understands
9 your question. Opinion on what question?

10 DELEGATE JAMES: 4.23.

11 DELEGATE MALKUS: That is correct.

12 DELEGATE JAMES: We have not got an opinion
13 from the Attorney General. I doubt that he could help
14 much.

15 THE CHAIRMAN: Delegate Johnson.

16 DELEGATE JOHNSON: I have a question. I think
17 Delegate Adkins can answer it.

18 THE CHAIRMAN: Delegate Grumbacher, you have
19 a question of the minority spokesman?

20 DELEGATE GRUMBACHER: Yes.

21 THE CHAIRMAN: Proceed.

1 DELEGATE GRUMBACHER: Senator James, I
2 believe you stated that the Governor has ironclad control
3 over the fiscal affairs of the State.

4 DELEGATE JAMES: That is probably an overstatement.
5 I made the overstatement for emphasis.

6 DELEGATE GRUMBACHER: Do you think he has ironclad
7 control over the Board of Education budget?

8 DELEGATE JAMES: The Board of Education budget:
9 Of course, I would have to say no on that. I would say
10 he has to follow the provisions; however, in certain
11 areas this would be true. For instance, let us take
12 the area of the state colleges. The Governor has control.
13 Dr. Pullen will tell you about that. He has ironclad
14 control over that. There are probably many areas.
15 However, where the law provides he must place certain
16 funds in his budget, this would not be true.

17 THE CHAIRMAN: Any other questions of the minority
18 spokesman? If not, Delegate Johnson desires to ask
19 a question of the Vice Chairman of the Committee.

20 Proceed, Delegate Johnson.

21 DELEGATE JOHNSON: My question is directed

1 in response to a question by the Chairman and what
2 I am wondering is if we in fact adopt Section 4.01 for
3 all practical purposes vesting exclusive executive
4 power in the Governor, whether or not even if the
5 legislature could appoint a treasurer under Section 4.23,
6 would I be correct in assuming that he could not; that
7 is, the Treasurer could not have the same duties, the
8 same quasi-executive duties under that appointment as
9 he has now?

10 DELEGATE ADKINS: Could a Treasurer be created
11 under the proposed new constitution to have exactly the
12 same duties as he now has?

13 DELEGATE JOHNSON: Yes.

14 DELEGATE ADKINS: Your query is: Would those
15 duties affect Section 4.01 as far as executive powers
16 of the State are concerned?

17 DELEGATE JOHNSON: Yes.

18 DELEGATE ADKINS: Let me talk to my brains here
19 a minute and see what he thinks.

20 DELEGATE JAMES: I have an irresistible desire
21 to answer.

1 DELEGATE ADKINS: I would be glad to yield
2 to the distinguished minority spokesman.

3 DELEGATE JAMES: If he becomes a part of the
4 Executive Branch, to that extent he is limited.

5 THE CHAIRMAN: Any further questions?

6 Do you have any further comment?

7 DELEGATE ADKINS: No, sir, except to say it is
8 my opinion that Section 4.01 would not raise a sufficient
9 constitutional block to the legislative providing --
10 the legislature providing such safeguards for management
11 of the state funds as it thought necessary to do so.

12 This is an off-the-cuff, off-the-top-of-the-head,
13 unresearched opinion.

14 THE CHAIRMAN: Any further questions? If not,
15 Delegate James may return to his seat.

16 Do you have an amendment to offer?

17 DELEGATE JAMES: The motion is that Recommendation
18 3 of the Committee Report No. EB-1 be amended by
19 striking "not" on page 1, line 22.

20 THE CHAIRMAN: May I have the amendment?

21 The Chair neglected to number the earlier

1 two amendments and I think that we probably should do so.

2 The first amendment offered earlier was with res-
3 pect to Recommendation 1. That would be Amendment 1
4 and the next with respect to Recommendation 2, that would
5 Amendment 2 and this would be Amendment 3.

6 The amendment is to strike the word "not" in
7 line 22 on page 1 of the committee report.

8 Is the motion seconded?

9 (Whereupon, the motion was seconded.)

10 THE CHAIRMAN: The motion having been seconded,
11 we can proceed to a discussion of the motion under the
12 debate schedule, 20 minutes of debate controlled --
13 I am sorry, ten minutes of debate controlled by Delegate
14 James and 10 minutes of uncontrolled limited debate.

15 The Chair recognizes Delegate James.

16 DELEGATE JAMES: Mr. Chairman, I would like
17 to yield four minutes of the controlled time to
18 Delegate Sherbow.

19 THE CHAIRMAN: Delegate Sherbow.

20 DELEGATE SHERBOW: Mr. Chairman and Members
21 of the Committee: I urge you to vote for this amendment

1 so that the State Treasurer remains as a constitutional
2 officer. I know that my good friend, Delegate Adkins
3 indicated that 116 years for the office of Comptroller
4 may seem rather aged, but the office we are talking about
5 today is even older than the Maryland Constitution.
6 It is 190 years old. It began in 1776 in the First
7 Maryland Constitution and it was carried over into 1851,
8 1854 and 1867 and there is a very strong burden on anybody
9 suggesting that it now be taken out of the Constitution.

10 You have before you what I believe to be an
11 approach of a practical nature to give the people the
12 right to see and to know. I do not care whether you call
13 it a Board of Public Works or whether you call it a
14 board by some other name. It follows exactly what
15 Governor Agnew had suggested except that he included the
16 State Treasurer. But now if you seek to include the
17 State Treasurer but if you write him out of the Consti-
18 tution, I do not think you have to be one of these
19 constitutional lawyers nor do you have to be just a
20 plain housewife to read Section 4.23 without realizing
21 that what it means is that if you do not make him a

1 constitutional officer, he is under the Governor of
2 Maryland, under the proposal of the Executive Committee.
3 He may be removed by the Governor and it is inconceivable
4 that under such circumstances the one office that is time-
5 honored for 190 years without a blemish, under men of
6 outstanding competence, he would not be able to be taken
7 to hold a membership on the Board of Public Works.

8 Now, you say what are his duties? I do not
9 believe in being so prolix that you get tired, so take
10 a look yourself when you are getting a little bored with
11 what is going on, and read the Commission draft and
12 you will see in pages 370, 371 and 372 without even
13 considering the Board of Public Works they have spelled
14 out in the earlier constitutions what his duties are.

15 They spell them out because they do think there
16 ought to be some of these safeguards. You will have
17 before you in a very few moments what I hope will take
18 the heat and fire out of much of what has happened and
19 bring in a great deal of light, and that is a proposed
20 amendment, which I understand has been adopted by
21 the Executive Committee by a vote of 15 to 5.

1 In that committee report they are going to
2 say that we should adopt a proposal for an interdepart-
3 mental board of review, call it that instead of Board
4 of Public Works and it shall consist of the Governor,
5 a principal department head named by him and an individual
6 appointed by the General assembly.

7 I say to you unless you name the State Treasurer
8 in the constitution, beware of what happens when you
9 come to Section 4.23 lest The Governor have all three
10 appointments which obviously he does not want, and which
11 was never contemplated by those who draft these proposals
12 by those who come before you.

13 It is important that we continue having men
14 of outstanding public ability for men in public office.
15 I want to tell you that one of the greatest recollections
16 any man or woman in Baltimore City can have is the
17 knowledge and the acquaintanceship of great men like
18 John M. Dennis, when he sat as State Treasurer and
19 Hooper Miles, Don't ask how much time he gave to the
20 State Treasury, think in terms of how much time he gave
21 to the State of Maryland.

1 THE CHAIRMAN: Your time has expired, Delegate
2 Sherbow.

3 DELEGATE SHERBOW: Thank you. And the same
4 thing is true of the present incumbent and I urge you
5 to vote for the amendment.

6 DELEGATE BOYCE: Does Delegate Sherbow yield?

7 THE CHAIRMAN: Delegate Boyce.

8 DELEGATE BOYCE: The Interdepartmental Board
9 of Review specifically says that an individual is appointed
10 to the Board by General Assembly. How could that possibly
11 give the Governor three choices?

12 DELEGATE SHERBOW: Very simply. The Governor,
13 or whoever names the person who will have the job of
14 being the State Treasurer, give it another title, if you
15 will, he will have the position with all of the work,
16 and responsibilities of the State Treasurer. He will be
17 under the Executive Department. Under 4.23 he will
18 be removable by the Governor, he will be under the
19 Governor's choice, as the Governor's choice. You make
20 it certain that you cannot name the State Treasurer by the
21 man who has the State Treasurer's duties as the Board

1 of Public Works.

2 DELEGATE BOYCE: You keep avoiding my question.
3 I am not talking about 4.23. I am talking about the new
4 Interdepartmental Board of Review. It says one of the
5 three members shall be an individual appointed to the
6 Board by a General Assembly. They could appoint the
7 President of the Senate if they wanted.

8 DELEGATE SHERBOW: They could not for other
9 reasons, but the point is they could appoint you or me,
10 but suppose they want to appoint the State Treasurer.

11 Suppose they believe the State Treasurer is a
12 man of extreme competence and a man of experience and a man
13 of tremendous ability.

14 DELEGATE BOYCE: Supposing there is no state
15 treasurer, who would they then appoint if they have no
16 state treasurer? They are going to have to look for
17 somebody with the competence and the ability that he has
18 got and I would say the state would be that much worse
19 off and would be the loser because you then dissipated
20 all the abilities, all the department work and all the
21 talents and scattered and fractured it among a dozen or

1 more executive departments and the State will have
2 lost on it.

3 DELEGATE BOYCE: Would that be an appointee of the
4 General Assembly or an appointee of the Governor?

5 DELEGATE SHERBOW: If he has got the office
6 doing the work that the State Treasurer is doing, he is
7 an appointee of the Governor. If he is named by the
8 General Assembly as a third member of this Board, he happens
9 to be then a member of the Board appointed by the
10 General Assembly.

11 If he happens to be the same person, you just
12 cannot do it under your 4.23.

13 THE CHAIRMAN: Delegate Adkins.

14 DELEGATE ADKINS: I am resisting the effort
15 to get into this debate but I think I agree with a note
16 that has just been handed me which cites a quotation
17 by Mark Twain which says, "The more you explain it
18 the more I don't understand it." I will therefore yield
19 to Delegate Robey.

20 DELEGATE ROBEY: We have heard a great deal of
21 discussion about checking the record, and that I have done.

1 I would like to go back to the record of John
2 Dennis. He was Treasurer since 1916, and not 1920.
3 There he also hath served without blemish. In 1922 there
4 was news of a break between Governor Ritchie and his
5 State Treasurer, Dennis. Why? Because Mr. Dennis tried
6 to amend the Governor's Reorganization Bill in two areas
7 and lost.

8 There was no secret at that time that Treasurer
9 Dennis aspired to be Governor. In 1926 Treasurer Dennis
10 advocated Comptroller Gorde be the next Governor,
11 despite the fact that Ritchie wanted him to be the
12 Comptroller. Treasurer Dennis took out an ad in the
13 Sunday papers that had the title "Ritchie For U. S.
14 Senator." This would have cleared the way for
15 Comptroller Gorde.

16 In 1923 Delegate Child mentioned he could not
17 recall any instance of the General Assembly trying to
18 amend the Constitution to take care of it, but Delegate
19 Child, in the General Assembly, did try to take care
20 of it by Constitutional amendment in the spring of 1933,
21 what they felt was an apparent conflict of interest and

1 that is that the Constitution be amended to prohibit
2 the officials of banks and trust companies to hold the
3 office. It is interesting to note that Treasurer Dennis
4 did not intend to resign as Treasurer because he was the
5 head of a large banking company in Baltimore.

6 This was April 1, 1933. One month later, May
7 19, 1933, Treasurer Dennis did in fact resign and admit
8 that there was an apparent conflict of interest and that
9 is why he did resign, when he said in his position as
10 State Treasurer, many problems had arisen involving
11 conflict of interest between the State and its bank
12 depositories and under the circumstances he deemed it his
13 duty to the State to withdraw his connection with the
14 banking institution.

15 We can come up to recent years, the year 1955,
16 when the Morning Sun of January 8, 1955, had the title,
17 "Byrd May Vie with Mahoney for the State Job." The State
18 job that they were talking about was the State Treasurer's
19 position. There were four other candidates for that
20 position, Hooper S. Miles, John Wood Logan, George W. Della,
21 and Emerson C. Harrington, Jr.

1 There was a headline on February 11, 1960,
2 and the headline read, "Pressman Hits Dual Role of Miles,"

3 "Pressman charged that a possible conflict of
4 interest exists in the fact that the State Treasurer is
5 chairman of the board of a bank which holds more of the
6 State's general fund deposits than any other in Maryland."

7 That is the Fidelity Baltimore National Bank,
8 26 per cent of all money of the state in deposit.
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1 THE CHAIRMAN: Your time has expired.

2 You have two and a half minutes.

3 DELEGATE JAMES: I will extend a singular act
4 of mercy to the Convention and say I think the argument
5 has been covered.

6 THE CHAIRMAN: Chairman Adkins.

7 DELEGATE ADKINS: I will yield such additional
8 time that is required to Delegate Sickles.

9 You have 6-1/2 minutes.

10 DELEGATE SICKLES: Mr. Chairman and Members
11 of the Convention, I will not use anywhere near that time
12 because I think the arguments have been made on both
13 sides and I think the basic issue is clear, but I think
14 there is more to it than just the basic arguments which
15 have been made, and I think it is the result of the
16 questions which I have asked.

17 If by our action today we would be condoning
18 the existing situation and we would be proposing and
19 supporting the proposition that a banker in Baltimore
20 City can, by becoming the Treasurer of the State, be
21 continued to be allowed to put funds of the State in

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1 bank, I cannot support this proposition.

2 I clearly and unequivocally say that it is
3 a conflict of interest. I think that when those of you
4 who have gone around the city and have asked the citizens
5 whether they want to elect a particular office or not,
6 try this weekend to ask them if the Treasurer of the
7 State ought to put any state funds in his bank, and
8 then duck. I tried it for the last two weeks, and they
9 are all on my side on this issue.

10 So as an added incentive to vote against including
11 the Treasurer in the Constitution, we ought to stand up
12 for what is right and what is decent and for the image
13 in the State of Maryland.

14 THE CHAIRMAN: Delegate Adkins, do you desire
15 to yield to anyone else?

16 DELEGATE ADKINS: No.

17 THE CHAIRMAN: Does any delegate desire to speak
18 in favor of the amendment and against the committee
19 recommendation?

20 Delegate Storm.

21 DELEGATE STORM: Mr. Chairman, in order to get

1 a little understanding and answer to Mr. Boyce's
2 inquiry of Mr. James, I talked with Mr. Shammel, who is
3 in the Treasurer's office and specifically charged
4 with investing funds of the state. It is interesting
5 to note that all of the non-interest-bearing funds,
6 as I understand it, are deposited in compensatory bank
7 accounts. At the end of the year, the bank figures up the
8 cost of handling these accounts and then the next year
9 either gives them more of a deposit interest-free or
10 less because these are handled, and probably some
11 of you have accounts in banks. At the end of the month
12 they will send you little slips saying they deducted
13 a certain amount because of the cost of handling your
14 account. That is the way the state does it.

15 So if the Treasurer puts money in his bank
16 without bearing interest, it is a compensatory balance,
17 and it is figured at the end of the year, and will be
18 reduced or raised the following year.

19 During 1967 I understand four and a half
20 million was used from U. S. bonds and certificates
21 of deposit and I understand it any bank that has any

1 funds, even interest account funds from the State, has
2 to deposit and show or have collateral for the amount
3 deposited.

4 It seems to me that this shows there would be
5 no conflict of interest, but I will suggest to the
6 legislature next session to appoint a Frederick banker
7 or maybe one from Silver Spring, or even an investment
8 banker if they feel it is wise.

9 Now, one other point. Since the legislature meets
10 only part time and since many things arise between
11 sessions of the legislature where emergency funds have
12 to be spent, sometimes new jobs are created, these things
13 are legislative functions and it seems to me that there
14 should be somebody in power to deal with these emergency
15 legislative matters and I think the legislature should
16 have a representative on this body. You can call it what
17 you will, you can call him what you will. I think the
18 present situation of the Treasurer and the Board of
19 Public Works is a good one.

20 THE CHAIRMAN: Any delegate desire to speak
21 against the amendment in favor of the recommendation?

1 Any other delegate desire to speak on the
2 recommendation?

3 Are you ready for the question?

4 The question arises on the amendment of Recommenda-
5 tion No. 3.

6 The Clerk will please ring the quorum bell.

7 So that there will be no misunderstanding, the
8 Chair desires to make it clear again that there will be
9 two votes on Recommendation 3. The first is a vote
10 on the amendment, to delete the word "not" in line 22.
11 If the motion is carried, Recommendation 3 as amended will be
12 submitted to your vote.

13 If the motion to amend fails, Recommendation 3
14 as submitted by the committee will be submitted to you
15 for your vote.

16 The first question, therefore, arises on the
17 adoption of the amendment to Recommendation 3. A vote
18 Aye is a vote in favor of the adoption of the amendment.
19 That is to delete the word "not" to provide that the
20 office of Treasurer be provided for in the constitution.
21 A vote No is a vote against the amendment.

1 Cast your votes.

2 Has every delegate voted?

3 Does any delegate desire to change his vote?

4 The Clerk will record the vote.

5 There being 63 votes in the affirmative and 73
6 in the negative, the motion fails and the amendment is
7 lost.

8 The question now arises on the adoption of
9 Recommendation No. 3 as printed in lines 21 to 23 of
10 Committee Report EB-1. A vote Aye is a vote in favor
11 of the committee recommendation that the office of
12 Treasurer not be provided for in the Constitution.

13 A vote No is a vote against.

14 Cast your vote.

15 Has every delegate voted?

16 Does any delegate desire to change his vote?

17 There being 92 votes in the affirmative and 44
18 in the negative, the recommendation is approved.

19 Delegate Storm.

20 DELEGATE STORM: I hate to ask this: I thought
21 I was voting right when I voted no. Somebody told me I

1 was wrong and I trusted him.

2 Will you change my vote? It is unimportant in the
3 result. I thought I was voting right. For a moment
4 I was misled. I am sorry.

5 THE CHAIRMAN: Delegate Storm, the Chair would
6 be very happy to accommodate you if it were merely
7 a matter of correcting the record. I am not sure whether
8 you are saying that you inadvertently pushed the lever the
9 wrong way or if you changed your mind. If you changed
10 your mind, the Chair cannot permit you to change your
11 vote.

12 DELEGATE STORM: I had the lever pushed the
13 right way and someone told me it was wrong, and I
14 believed him until I realized that I was right. (Laughter)

15 THE CHAIRMAN: The Chair would rule although
16 the matter is not entirely free from doubt, I think I could
17 have recognized the fact that Delegate Storm would have
18 intended to vote nay. His recorded vote is Aye and we
19 will therefore have the record corrected.

20 DELEGATE BOTHE: I was going to suggest that
21 Delegate Storm and I pair off because I think the

1 same thing happened in the opposite direction.

2 THE CHAIRMAN: There is no provision for pairing.

3 Under the debate schedule as amended, the next
4 item on the agenda for consideration is Recommendation
5 No. 1.

6 There is presently on the floor under considera-
7 tion a motion of Delegate Gallagher to reconsider the vote
8 by which Recommendation No. 1 as amended failed approval
9 by reason of the tie vote and to reconsider the vote by
10 which Recommendation No. 1 was amended.

11 The Chair recognizes Delegate Gallagher.

12 DELEGATE GALLAGHER: I should like to address
13 a point of parliamentary inquiry to the Chair.

14 THE CHAIRMAN: State the inquiry.

15 DELEGATE GALLAGHER: Mr. Chairman, having heard the
16 Chairman of the Committee on the Executive Branch
17 describe the peace pact at which the committee arrived
18 earlier today with respect to the Board of Public
19 Works, I should like to ask the Chair if it would be
20 possible for Delegate Morgan to offer his amendment so long
21 as my motion to reconsider is before the Committee of

1 the Whole.

2 THE CHAIRMAN: I do not believe he could offer
3 the amendment while the motion is pending.

4 I think in order to permit him to offer the
5 motion or the amendment, you would have to withdraw your
6 motion and renew it as a motion merely to reconsider the
7 action on the first recommendation as amended.

8 If that is then reconsidered, the first recom-
9 mendation as amended would be before the Committee of the
10 Whole and Delegate Morgan could offer his amendment.

11 DELEGATE GALLAGHER: That being the case, Mr.
12 Chairman, I should like first of all to withdraw my motion
13 to reconsider as it now stands before the Committee
14 of the Whole.

15 THE CHAIRMAN: Does the seconder consent?

16 DELEGATE FORNOS: No.

17 DELEGATE GALLAGHER: I had many seconds.

18 THE CHAIRMAN: The Chair is advised by the
19 Parliamentarian that the consent of the seconder is
20 not necessary.

21 Delegate Gallagher.

1 DELEGATE GALLAGHER: Mr. Chairman, that being
2 the case, I congratulate the Parliamentarian if that
3 is the case. I now move to reconsider Recommendation
4 No. 1 as amended.

5 (Whereupon, the motion was seconded.)

6 THE CHAIRMAN: The motion has been seconded.

7 The Chair recognizes Delegate Gallagher to speak
8 on the motion.

9 DELEGATE GALLAGHER: The only thing I would
10 say is that there appears to be a spirit of harmony
11 prevailing at least with some aspects of this particular
12 report and I should not like to see it disappear.
13 Therefore, I should like to say nothing more than this
14 appears to be an opportunity to promote brotherhood.

15 THE CHAIRMAN: The question arises on the
16 motion to reconsider the vote by which Recommendation No. 1
17 as amended failed of either approval or disapproval.
18 A vote Aye is a vote in favor of reconsideration; a
19 vote No is a vote against.

20 Cast your vote.

21 Has every delegate voted, does any delegate

1 desire to change his vote?

2 The Clerk will record the vote.

3 There being 115 votes in the affirmative and
4 17 in the negative, the vote by which Recommendation No. 1
5 as amended failed to be either approved or disapproved
6 is reconsidered.

7 The Chair recognizes Delegate Morgan.

8 DELEGATE MORGAN: Mr.Chairman, I have an
9 amendment, designated Amendment No. 3 to Recommendation
10 No. 1.

11 THE CHAIRMAN: The page will distribute the
12 amendment.

13 This will now be Amendment No. 4.

14 Will you please correct the copy of the
15 amendment as it is handed to you, Amendment No. 4.

16 The Clerk will read the amendment.

17 MR. QUILLEN: Amendment No. 4 to Recommendation
18 No. 1 By Delegate Morgan.

19 An Amendment to Recommendation #1 - Committee
20 Report EB-1.

21 Strike out lines 13 to 15 on page 1 of
 the Committee Report and insert in lieu thereof the

1 following:

2 1) The Committee recommends that there be
3 provided in the Constitution as part of the Executive
4 Branch Article an Interdepartmental Board of Review
5 to consist of the Governor, a head of a principal depart-
6 ment designated by the Governor, and an individual
7 appointed to the Board by the General Assembly, such Board
8 to perform in such a manner and to have such of the
9 existing powers of the Board of Public Works together
10 with such other powers as the General Assembly may
11 prescribe.

12 THE CHAIRMAN: Is there a second?

13 (Whereupon, the amendment was seconded.)

14 THE CHAIRMAN: The Chair recognizes Delegate
15 Morgan to speak to the amendment.

16 DELEGATE MORGAN: This amendment to Committee
17 Recommendation No. 1 is in substance what was adopted
18 by the Executive Branch Committee this morning by
19 a vote of 15 to 5.

20 I am going to read the roll call on that vote.
21 Voting in favor of the amendment: E. Dale Adkins, Jr.,

1 J. Glenn Beall, Sr., Roy Borom, Raymond G. Boileau,
2 Allen E. Buzzell, Walter G. Finch, David T. Mason,
3 Ralph W. Powers, William S. James, Agnes Smith, Carlton R.
4 Sickles, and Millard J. Tawes, and Dale Adkins, C. Meredith
5 Boyce, Frank C. Robey, Jr., C. Ferdinand Sybert.

6 I think this amendment meets many of the
7 problems that have plagued the Executive Branch Committee.

8 One of the principal problems that have plagued
9 the Executive Branch Committee is the Division of the
10 executive authority between the Governor and the
11 Board of Public Works and it has always seemed to us
12 having an elected official, namely, the Comptroller
13 on the Board of Public Works, having the Treasurer
14 elected by the General Assembly on the Board of Public
15 Works and the Governor the third member, it is very
16 possible for the Comptroller and the Treasurer to outvote
17 the Governor on proposed policies and programs and that is
18 what the Executive Branch Committee wanted to avoid.

19 This particular amendment will avoid that
20 by giving the Governor two people on the Board and
21 give the General Assembly one individual on that Board

1 of Review.

2 The Board of Review I assume will operate
3 in the same manner as the Board of Public Works.

4 It will operate in public.

5 Minutes will be kept and I am hopeful that
6 the General Assembly in exercising the power that we
7 have given it will winnow out the mass of trivia that
8 the Board of Public Works has to deal with at the present
9 time and that takes up so much of its energy.

10 I ask for the adoption of this amendment.

11 THE CHAIRMAN: Delegate Dorsey.

12 DELEGATE DORSEY: Mr. Chairman, when my good
13 friend Gerald Morgan called the honor roll of those who
14 voted in favor of this amendment, you will notice that
15 my name was not among them.

16 With a Republican **Governor** there is no
17 doubt that this amendment would be a check on the
18 Executive.

19 I am looking forward to the years ahead when
20 there will be both a Democratic Governor and a Democratic
21 legislature and I say to this Convention that under

1 this amendment there would be no check comparable to the
2 present Board of Public Works upon the Executive.

3 Some years ago, Woodrow Wilson wrote that the
4 history of human freedom is the history of restraints
5 and limitations placed upon the power of government.

6 I say as I said yesterday that for over a
7 **century** the Board of Public Works has been a good check
8 upon the Executive Branch of this state, and for that
9 reason, Mr. President, I shall continue to oppose this
10 amendment.

11 THE CHAIRMAN: Does any delegate desire to
12 speak in favor of this amendment?

13 Delegate Gleason?

14 DELEGATE GLEASON: I have a question I would like
15 to ask the Chairman of the Committee.

16 THE CHARIMAN: Delegate Morgan, do you yield
17 to a question?

18 DELEGATE MORGAN: I yield.

19 THE CHAIRMAN: Delegate Gleason.

20 DELEGATE GLEASON: Am I correct in my understand-
21 ing of this compromise proposal that the General Assembly

1 if it should so desire does not have to grant any
2 power to the Board of Review provided for in this
3 amendment?

4 THE CHAIRMAN: Delegate Morgan. I did not understand
5 Does not have to what?

6 THE CHAIRMAN: Delegate Gleason.

7 DELEGATE GLEASON: Does not have to, if it
8 desires not to, to provide any powers to this Board of
9 Review.

10 DELEGATE MORGAN: That is correct.

11 DELEGATE GLEASON: In that eventuality I will
12 support this meaningless provision.

13 THE CHAIRMAN: Does any delegate desire to
14 speak in opposition to this amendment?

15 DELEGATE JOHNSON: Not really in opposition,
16 but I do have a question.

17 THE CHAIRMAN: To whom?

18 DELEGATE JOHNSON: I assume to Delegate
19 Morgan.

20 THE CHAIRMAN: Delegate Morgan, will you
21 yield?

1 DELEGATE MORGAN: I yield.

2 DELEGATE JOHNSON: Would you be kind enough
3 to enlighten me as to the names of some of
4 the principal departments your committee has in mind?

5 THE CHAIRMAN: Delegate Morgan.

6 DELEGATE MORGAN: The principal departments
7 will be initially established by the General Assembly;
8 in other words, the General Assembly under our Executive
9 Article will have two years within which to group the
10 various functions of the Executive Branch of the State
11 Government under not more than 20 principal departments.
12 After that two-year period the Governor can establish
13 principal departments by executive order.

14 Does that answer your question?

15 DELEGATE JOHNSON: Yes.

16 THE CHAIRMAN: Delegate Freedlander.

17 DELEGATE FREEDLANDER: Would the Chairman
18 of the Committee please yield for a question?

19 THE CHAIRMAN: Delegate Morgan, do you yield?

20 DELEGATE MORGAN: I yield

21 DELEGATE FREEDLANDER: Will this new

1 body be called the Interdepartmental Board of Review
2 or will it be called the Department of Public Works?

3 DELEGATE MORGAN: Delegate Freedlander, it
4 really does not make much difference to me what you call
5 it, I just thought that calling it the Interdepartmental
6 Board of Review was much more accurate than calling it
7 the Board of Public Works.

8 Actually, if I were a kid in high school, when
9 I came across the Board of Public Works, I would think
10 it had something to do with the construction of dams
11 and building bridges and things of that sort, but when
12 I find out it has control over expenditures and creation
13 of state expenditures from the emergency fund and
14 approval of travel expenses of people coming from Missouri
15 to the University of Maryland for the purpose of
16 interviewing the President for a teaching job and approving
17 the plans of the West Annapolis Fire Department to hold
18 its annual carnival on the Naval Academy parking lot
19 grounds, I just thought calling it the Interdepartmental
20 Board of Review was a much more accurate title than
21 the Board of Public Works.

1 DELEGATE FREEDLANDER: I have another question.

2 THE CHAIRMAN: Delegate Freedlander.

3 DELEGATE FREEDLANDER: In the light of your
4 reply then what would be the purpose of freezing into the
5 Constitution a Board that may never exist by this name,
6 namely, the Board of Public Works if it is the intention
7 of the committee to have the existing powers frozen in.
8 Could this not be done by transition legislation by a
9 schedule rather than to freeze in words that may be
10 meaningless upon the adoption of this constitution?

11 THE CHAIRMAN: I think the Chair should stick
12 to what would be the effect of a recommendation to be
13 included in a committee report.

14 This is not language to be included in the
15 Constitution. Under the rules of the Convention, only a
16 committee recommendation can include language to be
17 included in the Constitution.

18 This proposal recommending the correction
19 of an interdepartmental board of review, if approved,
20 would, the Chair believes, require the Committee
21 on the Executive Branch to draft precise language to

1 carry that recommendation into effect. It would not
2 necessarily be the precise words in this recommendation.
3 You concur in that understanding, Delegate Morgan?

4 DELEGATE MORGAN: I concur in that understanding,
5 but I would like to add that in the amendment itself,
6 that is the amendment which the Committee adopted this
7 morning, we set out the existing functions of the Board
8 of Public Works in general terms and said that the legis-
9 lature could describe such of these functions as it chose
10 to prescribe for the new Interdepartmental Board of
11 Review.

12 It seemed to me highly desirable that this
13 Convention when it sets up an Interdepartmental Board of
14 Review at least indicates the kind of things it has in
15 mind for the Board of Review to review.

16 THE CHAIRMAN: Any delegate desire to speak in
17 opposition to the amendment?

18 Delegate Fornos?

19 DELEGATE FORNOS: Mr. Chairman, I have a substi-
20 tution to this amendment for lines 17 and 18 which is
21 being drafted and in the absence of it being before the

1 Convention, if there is consent, I would like to explain
2 it and then let us discuss it while the amendment is
3 being mimeographed.

4 THE CHAIRMAN: Can you indicate the nature?

5 DELEGATE FORNOS: In view of the fact the
6 Convention voted to retain the Office of the Comptroller,
7 I would striks on line 17 "an individual" and on line
8 18, all of it except the comma, and then substitute
9 "the Comptroller as a member of the Board of--", whatever
10 we call this thing.

11 THE CHAIRMAN: How long ago was the amendment
12 prepared?

13 DELEGATE FORNOS: At the point we indicated we
14 would go to the No. 1 point.

15 THE CHAIRMAN: As the Chair understands
16 the proposed amendment, it would delete from line 17
17 the words "an individual" and --

18 DELEGATE FORNOS: No.

19 THE CHAIRMAN: Where it is "an individual"
20 and all of line 18 and substitute the single word "Comp-
21 troller."

1 DELEGATE FORNOS: "The Comptroller."

2 THE CHAIRMAN: In the absence of objection,
3 the Chair would be disposed to permit debate on the
4 amendment, with the understanding that the printed
5 amendment will be before you before the vote is taken.

6 Is there any objection?

7 The Chair hears no objection.

8 Is the proposed amendment seconded?

9 (Whereupon, the amendment was seconded.)

10 THE CHAIRMAN: The amendment having been
11 seconded, the Chair recognizes Delegate Bushong.

12 DELEGATE BUSHONG: I object.

13 THE CHAIRMAN: Would you use a microphone,
14 please?

15 DELEGATE BUSHONG: I object until the amendment
16 is put on our desk. I think the rule says the amendment
17 cannot be considered unless it is printed.

18 For what purpose does Delegate Bothe rise?

19 DELEGATE BOTHE: I have a question of Delegate
20 Morgan which I thought might be handled while we are
21 waiting on the amendment.

1 THE CHAIRMAN: Delegate Morgan, do you
2 yield to a question?

3 DELEGATE MORGAN: Yes.

4 DELEGATE BOTHE: Delegate Morgan, is there any
5 constitutional question as to whether an interdepartmental
6 board which would be part of an executive branch and con-
7 sisting of persons appointed by the legislature and by
8 the Governor could be created by the legislature or
9 the Executive Branch without constitutional authorization?

10 DELEGATE MORGAN: I said yesterday there was
11 no question in my mind whether that could be done.
12 Since that time very knowledgeable individuals have
13 expressed considerable doubt on that issue and I must
14 say I do not believe I can give you an answer to it
15 without going into it quite thoroughly.

16 THE CHAIRMAN: The Chair is ready to announce
17 its ruling with respect to the objection of Delegate
18 Bushong.

19 The Chair rules the objection is out of order.
20 The rule in question referring to printed amendments refers
21 only to amendments to committee recommendations or

1 delegate proposals, under the rule the Chair can require
2 any amendment to be in writing.

3 The Chair will propose that we continue the
4 discussion without the amendment being on the desk
5 of the delegates.

6 DELEGATE BUSHONG: I just wanted to ask for
7 an explanation and you have given it to me.

8 THE CHAIRMAN: For what purpose does Delegate
9 Sherbow rise?

10 DELEGATE SHERBOW: Parliamentary inquiry.

11 THE CHAIRMAN: State the inquiry.

12 DELEGATE SHERBOW: Am I correct in recalling
13 the statment made by you earlier, Mr. Chairman, in reply
14 to a question by Delegate Boileau that the Comptroller,
15 as the posture of events then stood, could be appointd
16 by the Governor, and if that is so, is it not true
17 that under this amendment, the Governor would have
18 all three appointments?

19 THE CHAIRMAN: The answer to your parliamentary
20 inquiry is as follows: Delegate Boileau asked whether
21 under the Recommendation 2 as approved by the Committee

1 of the Whole the Committee of the Whole at a later session.
2 could provide that the Office of Comptroller be appointive
3 rather than elected.

4 The Chair replied in the affirmative. If that
5 is done, then your observation would be correct. The
6 matter is not yet decided.

7 For what purpose did Delegate Weidemeyer rise?

8 DELEGATE WEIDEMEYER: Parliamentary inquiry.

9 THE CHAIRMAN: State the inquiry.

10 DELEGATE WEIDEMEYER: Should we approve this
11 amendment without further amendment as to the name
12 of the Board or the composition of the members, would
13 we be precluded later on when a proposal is introduced
14 for placing into the Constitution, from offering an
15 amendment as to the name of the Board, composition
16 of the members and the mode of election or appointment?

17 THE CHAIRMAN: The Chair would think that the
18 question of the name would be open since the recommendation
19 does not fix the name as part of the recommendation.

20 The Chair would not think the composition
21 could vary from that set out in the recommendation,

1 namely, that it would consist of three persons, the
2 Governor, the head of the Principal Department designated
3 by the Governor and an individual appointed to the
4 Board by the General Assembly or, if the amendment prevailed,
5 and the Comptroller. Does that answer your inquiry?

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1 DELEGATE WEIDEMEYER: That answers the inquiry,
2 and I would like to have a little time to get an amendment
3 to that amendment.

4 THE CHAIRMAN: I think we had better debate the
5 amendment first. We haven't started to do that.

6 The Chair recognizes Delegate Fornos to speak to
7 the amendment. The amendment that is now before you is an
8 amendment to amendment 4. It will be designated as amend-
9 ment 5. It will strike from line 17 of Amendment 4 the
10 words "an individual" and all of line 18, and substitute
11 the words "the Comptroller."

12 Delegate Fornos.

13 DELEGATE FORNOS: Mr. Chairman, I think the
14 discussion centering around the need for the reten or the
15 elimination of the Comptroller was made this morning, and
16 I stand on the arguments that were made this morning to
17 support my amendment.

18 THE CHAIRMAN: Delegate Morgan.

19 DELEGATE MORGAN: Mr. Chairman, I rise in
20 opposition to the amendment as proposed by Mr. Fornos.

21 The proposal which I have offered as an

1 amendment was adopted as a result of a compromise, and I am
2 hoping that no amendments will be adopted to it.

3 THE CHAIRMAN: Delegate Boyce.

4 DELEGATE BOYCE: Could I ask MR. Fornos a
5 question, please, sir? I am confused.

6 THE CHAIRMAN: Delegate Fornos, do you yield
7 to a question?

8 DELEGATE FORNOS: Yes, sir.

9 THE CHAIRMAN: Delegate Boyce.

10 DELEGATE BOYCE: With your substitution, Dele-
11 gate Fornos, would this mean then that at a later date
12 if this Convention saw fit to make the Comptroller an
13 appointive Comptroller, the Governor would then have two
14 appointments to this Board, and himself?

15 THE CHAIRMAN: Delegate Fornos.

16 DELEGATE FORNOS: I think that would be some-
17 thing we would have to consider when we reached that
18 point.

19 DELEGATE BOYCE: I don't think that is true.
20 I am assuming, and probably assuming wrong, but assume
21 that he should become an appointive Comptroller. Then this

1 would really basically mean the Governor would be on this
2 Board with two of his appointees. Is that not correct?
3 That is my question.

4 THE CHAIRMAN: Delegate Fornos.

5 DELEGATE FORNOS: I think if you have that fear
6 that I would be amenable to including in the language of
7 my amendment that the governor shall have no more than
8 himself and one other appointment.

9 THE CHAIRMAN: Do you have any further question,
10 Delegate Boyce?

11 DELEGATE BOYCE: I think you would not get my
12 vote unless you did that, sir.

13 DELEGATE DORSEY: Mr. President.

14 THE CHAIRMAN: Delegate Dorsey.

15 DELEGATE DORSEY: I would like to ask Delegate
16 Fornos if he would change the language of his amendment to
17 read, "the comptroller, elected by the people"?

18 THE CHAIRMAN: Delegate Fornos.

19 DELEGATE FORNOS: Yes, sir. Thank you very much.

20 THE CHAIRMAN: Delegate Dorsey.

21 DELEGATE DORSEY: I would be glad to second it.

1 THE CHAIRMAN: Are you changing your amendment?

2 DELEGATE FORNOS: That is amenable to me, Mr.
3 Chairman.

4 THE CHAIRMAN: That is not the question. Are
5 you changing it?

6 DELEGATE FORNOS: Yes, sir.

7 THE CHAIRMAN: Are you changing your written
8 amendment?

9 DELEGATE FORNOS: I will have to do so, unless
10 there are any other questions. If I may be excused to do
11 so, I will.

12 THE CHAIRMAN: Delegate Johnson.

13 DELEGATE JOHNSON: Mr. Chairman, I have a
14 question. I believe it probably should be directed to
15 Delegate Morgan, if he will yield.

16 THE CHAIRMAN: Delegate Morgan, do you yield
17 to a question?

18 DELEGATE MORGAN: I yield.

19 THE CHAIRMAN: Delegate Johnson.

20 DELEGATE JOHNSON: Delegate Morgan, this ques-
21 tion may or may not, or should or should not be directed

1 to you. I am not certain. But I believe I have
2 heard or read of a minority report, or a compromise per-
3 taining to the Board of Public Works, or some other named
4 board, that would consist of five members. One would be
5 the comptroller and another would be the treasurer,
6 and the governor, of course, and two others appointed by
7 the governor.

8 Could you tell me what happened to that idea?

9 THE CHAIRMAN: Delegate Morgan.

10 DELEGATE MORGAN: That so-called compromise was
11 offered in the Executive Branch Committee and was defeated.
12 It was also offered I believe again this morning, but
13 it was the feeling of the majority on the committee that
14 that did not represent a compromise, that it represented a
15 capitulation on the part of the majority, and so by a 15
16 to 5 vote the Executive Branch Committee voted to adopt
17 this that we have before us now as the compromise.

18 THE CHAIRMAN: Delegate Johnson.

19 DELEGATE JOHNSON: Delegate Morgan, how does
20 that compromise or capitulation that we were just speaking
21 about, how does that differ in principle really from the

1 compromise proposal that your committee just offered?

2 THE CHAIRMAN: Delegate Morgan.

3 DELEGATE MORGAN: I think the majority of
4 the committee felt that a five-man board, Board of Public
5 Words was too large and too unwieldy to go over the large
6 agendas that the Board has, and that a three-man board
7 is sufficient to do that; and also at the time that that
8 was proposed to us with the compromise, the majority of
9 the committee would not agree to elect a comptroller.
10 We would not agree with an elected attorney General.
11 We would not agree to a treasurer elected by the General
12 Assembly. And so that, in that sense, I say if we had
13 agreed to this so-called compromise instead of
14 compromise it would have been a capitulation on the part
15 of the majority.

16 And so in lieu thereof the committee adopted
17 the proposal which I have offered as an amendment to Com-
18 mittee Recommendation No. 1.

19 THE CHAIRMAN: Delegate Johnson.

20 DELEGATE JOHNSON: Delegate Morgan, would you
21 agree that inasmuch as the committee has provided for the

1 office of comptroller in the constitution and probably
2 the election thereof, shouldn't the comptroller, if you
3 can speak for the entire committee -- I don't know whether
4 you can or not -- but shouldn't the comptroller be on this
5 board?

6 THE CHAIRMAN: Delegate Morgan.

7 DELEGATE MORGAN: The committee voted that
8 down twice, and I would be opposed to it the third time.

9 THE CHAIRMAN: Delegate Johnson.

10 DELEGATE JOHNSON: Was that before or after
11 the action of the Committee of the Whole with respect to the
12 inclusion in the Constitution of the Office of Comptroller?

13 THE CHAIRMAN: Delegate Morgan.

14 DELEGATE MORGAN: That was before the action of
15 the committee, but at the present time I would be very much
16 opposed to it.

17 THE CHAIRMAN: Delegate Johnson.

18 DELEGATE JOHNSON: I would just like to see
19 the committee get together for another meeting, Mr. Chair-
20 man.

21 THE CHAIRMAN: I don't think we can continue

1 these recesses to permit the committee on the Executive
2 Branch to meet indefinitely.

3 For what purpose does Delegate Clagett rise?

4 DELEGATE CLAGETT: Mr. Chairman, to ask Delegate
5 Morgan to yield to a question.

6 THE CHAIRMAN: Delegate Morgan, do you yield
7 to a question?

8 DELEGATE MORGAN: I yield.

9 THE CHAIRMAN: Delegate Clagett.

10 DELEGATE CLAGETT: Delegate Morgan,
11 would you please explain to me wherein this amendment
12 avoids the dispersion of the executive authority and the
13 ability of the government to implement its programs?

14 THE CHAIRMAN: Delegate Morgan.

15 DELEGATE MORGAN: Because the governor has two
16 men of his own on the Board, plus one individual appointed
17 by himself.

18 THE CHAIRMAN: For what purpose does Delegate
19 Chabot rise?

20 DELEGATE CHABOT: To ask a parliamentary inquiry.

21 THE CHAIRMAN: State your inquiry.

1 DELEGATE CHABOT: Am I correct in my under-
2 standing that if amendment 4 is adopted, whether with or
3 without Delegate Fornos' amendment, that we will neverthe-
4 less have to be presented with additional language on the
5 consideration of Recommendation EB-1, and that it is open
6 to the Convention to reject any additional language?

7 THE CHAIRMAN: That is, of course, correct.
8 The report here would have, if approved, would have to
9 be implemented by the drafting of a provision for the Con-
10 sultation, which would have to be included in the committee
11 recommendation, or an amendment to it.

12 Such a recommendation could not be at variance
13 with the action of the Committee of the Whole on this
14 item.

15 Delegate Chabot.

16 DELEGATE CHABOT: Am I correct in my understand-
17 ing that if amendment number 4 is defeated, that nothing that
18 we have done thus far would prevent the Committee on the
19 Executive Branch from offering for adoption at the appro-
20 priate point in Committee Recommendation EB-1 exactly
21 the same language that it could offer if amendment no. 4

1 were adopted?

2 THE CHAIRMAN: The way you phrase your question,
3 the Chair hesitates. The Committee could offer the same
4 language that it might offer. It would not be necessarily
5 compelled to offer the same language.

6 Delegate Chabot.

7 DELEGATE CHABOT: Would it be in order for
8 the committee or anyone else to offer that same language?

9 THE CHAIRMAN: It would certainly be in order
10 for the committee to submit that as an amendment. It would
11 be in order for anybody else at the proper time to submit
12 such an amendment.

13 In other words, the question in the posture you
14 suppose would have the Committee of the Whole taking no
15 action whatsoever with respect to a board of this kind.
16 This would leave the Committee of the Whole free to
17 consider creation or not to consider creation of such a
18 board by the Committee Recommendation or amendment
19 to the Committee Recommendation.

20 Deleqate Chabot.

21 DELEGATE CHABOT: Am I correct in my understandin

1 that if amendment 4 is adopted, with or without the Forno.
2 amendment, that the Committee of the Whole would then
3 be precluded from deciding such matters as to permit
4 the governor to appoint anyone, not merely the head of a
5 principal department, as his appointee?

6 THE CHAIRMAN: I am not sure. Would you state
7 that again?

8 DELEGATE CHABOT: If Amendment No. 4 is adopted,
9 am I correct in assuming that when we get to
10 Recommendation EB-1, the Committee of the Whole would be
11 precluded from determining that the governor should have a
12 free hand in appointing his appointee to that Board?

13 THE CHAIRMAN: I am not sure what you mean by
14 "free hand." If you mean that the committee would be pre-
15 cluded from changing the provision that the appointee would
16 be head of the principal department, your statement is
17 correct.

18 Delegate Chabot.

19 DELEGATE CHABOT: Mr. Chairman, I am not clear
20 as to whether or not this is an appropriate point of order,
21 but I suggest that it is nevertheless improper procedure

1 then at this point for the Committee of the Whole to be
2 making what are in essence decisions upon details, and for
3 all practical purposes, decisions upon language, without
4 having before us consideration of the language to be in-
5 serted into the Constitution; and that it would be most
6 appropriate if this matter before us be before us at a time
7 when we are considering Constitutional language.

8 THE CHAIRMAN: The point of order you raise
9 depends upon the interpretation of the rule that language
10 to be included in the Constitution be submitted to the
11 Convention, either by delegate proposal or by committee
12 recommendation. The Chair had been proceeding on the
13 assumption that this was not the precise language. You
14 raised the question that even though it is not the precise
15 language, it could control precise language, and the
16 Chair would like a few minutes to consider it.

17 For what purpose does Delegate Dorsey rise?

18 DELEGATE DORSEY: Mr. President, when the
19 Executive Committee met this morning, I recommended
20 that we suspend action on the so-called compromise until a
21 vote was taken on the comptroller and treasurer. That has

1 now been done, and I really feel that if the Convention
2 would take a 30-minute recess and the Executive Branch
3 Committee would reconvene, that we might work out something
4 that is acceptable to everybody in this Convention.

5 THE CHAIRMAN: The language of Rule 53, refer-
6 ring to Delegate Proposals and Committee Recommendations,
7 uses the following language. It says: "Any suggestion,
8 proposition, or draft intended to become a part of any
9 revised Constitution is not," as the Chair thought, "limited
10 to language intended to become a part of the revised
11 Constitution."

12 The Chair therefore feels that the amendment
13 would constitute a suggestion or proposition intended to
14 become a part of a revised Constitution, even though not
15 in the precise language of the Constitution.

16 The Chair regretfully rules that if the point
17 of order is pressed it will be sustained. I ask that you
18 defer for just a moment.

19 The Chair would like to consult with
20 Delegate Powers at the rostrum, and Delegate James and
21 Delegate Morgan.

1 (Whereupon, there was an off-the-record dis-
2 cussion between Chairman Eney and Delegates Powers, James,
3 and Morgan.)

4 THE CHAIRMAN: The Committee will please come
5 to order.

6 For the reasons stated by the Chair, the Chair
7 will rule Amendment No. 4 out of order at this time, and
8 accordingly, Amendment No. 5, intended as an amendment
9 to Amendment No. 4, will also be out of order.

10 At this point the chair will recognize Delegate
11 Powers for the purpose of moving that the Committee of the
12 Whole rise and request the Convention to make further
13 consideration of Recommendation 1 of Committee Report EB-1
14 a special matter of business at the time of the considera-
15 tion of Committee Recommendation EB-1.

16 The reason for this is that at that time precise
17 language would be drafted and submitted to you in connec-
18 tion with a consideration of/article on the Executive Branch.
the

19 The Chair recognizes Delegate Powers.

20 DELEGATE POWERS: Mr. Chairman, I move the
21 Committee rise for the purpose set forth by the Chair.

1 THE CHAIRMAN: Is there a second to the motion
2 (Whereupon, the motion was seconded.)

3 THE CHAIRMAN: Is there any discussion?
4 All in favor, signify by saying Aye; contrary,
5 No.

6 The Ayes have it.

7 It is so ordered.

8 (The mace was replaced by the Sergeant at Arms.)
9 (Whereupon, at 4:40 p.m., the Committee of the
10 Whole rose, and the Convention reconvened.)

11 THE PRESIDENT: The Convention will please
12 come to order.

13 On behalf of the Committee of the Whole the
14 Chair reports that it has had under consideration Committee
15 Report No. EB-1; it still has it under consideration, and
16 desires leave to sit again.

17 The Chair recognizes Delegate Powers.

18 DELEGATE POWERS: Mr. President, I move that
19 the first item in the Committee Report No. EB-1 be made
20 a special order of business when the Committee Recommendation
21 EB-1 is before the Committee of the Whole.

1 THE PRESIDENT: Is there a second?

2 (Whereupon, the motion was seconded.)

3 THE PRESIDENT: The question arises on the
4 motion that Recommendation No. 1 of Committee Report EB-1
5 be made a special order of business when the Committee of
6 the Whole is considering Committee Recommendation EB-1.

7 All in favor, signify by saying Aye; contrary,
8 No.

9 The Ayes have it.

10 It is so ordered.

11 The Chair recognizes Delegate Powers.

12 DELEGATE POWERS: Mr. President, I move the
13 Convention resolve itself into the Committee of the Whole
14 for the purpose of resuming consideration of Committee Report
15 EB-1.

16 THE PRESIDENT: Is there a second?

17 (Whereupon, the motion was seconded.)

18 THE PRESIDENT: All in favor, signify by saying
19 Aye; contrary, No.

20 The Ayes have it. It is so ordered.

21 (The mace was removed by the Sergeant at Arms.)

1 (Whereupon, at 4:47 p.m., the Convention
2 resolved itself into the Committee of the Whole.)

3 THE CHAIRMAN: The Committee of the Whole
4 will please come to order.

5 The next item for consideration under the debate
6 schedule is item number 4.

7 The Chair recognizes Delegate Morgan for the
8 purpose of presenting the Committee Report.

9 DELEGATE MORGAN: Mr. Chairman, the Committee
10 on the Executive Branch recommends Recommendation No. 4
11 of Committee Report No. EB-1, that the Office of the
12 Attorney General not be provided for in the Constitution.

13 Article V of the present Constitution creates
14 the Office of Attorney General, and provides that he shall
15 be popularly elected. Section 3 of that Article sets forth
16 the duties of the office as follows:

17 (1) to represent the State in all cases in the
18 Court of Appeals of Maryland or in the Supreme Court of
19 the United States; (2) to give his opinion in writing
20 whenever required by the General Assembly or either branch
21 thereof, the Governor, the Comptroller, Treasury, or any

1 State's attorney, on any legal matter or subject pending
2 before him; (3) when required by the governor or General
3 Assembly, to aid any State's attorney in prosecuting any
4 suit or action brought by the State in any court of this
5 State; (4) to commence and prosecute, or defend any suit
6 or action in any of said courts on the part of the State
7 which the General Assembly, or the Governor, acting accord-
8 ing to law, shall direct to be commenced, prosecuted, or
9 defended; (5) to perform such other duties and appoint such
10 number of deputies or assistants as the General Assembly
11 may by law prescribe.

12 Section 3 also provides that the governor cannot
13 employ any additional counsels unless authorized by the
14 General Assembly.

15 Under Article 32(a) of the Maryland Code, the
16 Office of Attorney General is charged with the supervision
17 and direction of the legal business of the State and the
18 representation of all boards and commissions of the State
19 except the Public Service Commission.

20 Hence, the Committee conceives that under the
21 present Constitution and laws the office of the Attorney

1 General does not fit neatly into any particular branch of
2 the State Government, although the Committee does contend
3 that most of the Attorney General's duties are performed
4 for the executive branch of the State Government.

5 The Committee on the Executive Branch feels that
6 a necessary part of the governor's position as the chief
7 executive of the State is the ability to appoint the law-
8 yer for the executive branch of the State government. This
9 is a principle applied in private business and at the federal
10 and local levels of government, and the committee can see no
11 good reason why an exception should be made at the State
12 level of government.

13 The committee, therefore, recommends that the
14 office of Attorney General not be Constitutionally created.

15 There is one additional reason for the committee's
16 recommendation: The committee feels that Maryland has had
17 a heritage of fine Attorneys General, but at the same time,
18 the committee feels it clear that the requirement that the
19 Attorney General run for popular election has materially
20 narrowed the field of outstanding lawyers who are willing
21 to serve as Attorney General, because of their reluctance

1 to go through the rigors of a political campaign.

2 Today, attorneys general are actually selected
3 by candidates for the office of governor to run on the
4 governor's ticket. By making the Attorney General
5 an appointee of the Governor, the Governor would be able
6 to select from among a much larger field a fine lawyer to
7 serve as his attorney general, without taking into account
8 his political attractiveness or willingness to stand for
9 election.

10 That, in essence, is the report of the committee
11 in support of its recommendation that the Constitution
12 remain silent as to the Attorney General.

13 Are there any questions?

14 DELEGATE CLARK: (Presiding) Are there
15 any questions of the Chairman of the Committee?

16 Delegate Rybczynski.

17 DELEGATE RYBCZYNSKI: Mr. Chairman, to what
18 portions of the State government, or the local governments,
19 does the Attorney General presently act as legal adviser?
20 Is it just to the administrative section, or does it cross
21 over various lines?

1 DELEGATE CLARK: Delegate Morgan.

2 DELEGATE MORGAN: I think he acts sometimes
3 for all branches. As a matter of fact, on occasion he
4 acts for the judicial branch, where there are disputes
5 between judges or matters of that kind.

6 DELEGATE CLARK: Are there any other questions?

7 (There was no response.)

8 If not, Delegate Morgan, the next thing is
9 for Delegate Mason to come forward with the minority
10 report.

11 Delegate Mason.

12 DELEGATE MASON: Mr.Chairman, Ladies and
13 Gentlemen of this Committee:

14 As you perhaps know, the Committee on the
15 Executive Branch voted 11 to 9 not to recommend to this
16 Convention the office of the attorney general. A minority
17 report was filed, and I appear here as representative of
18 that minority.

19 I assume that all the delegates have read the
20 minority report. Therefore, I will not impose upon you
21 by rereading the report.

1 However, I will review with you briefly some of
2 the reasons stated in the majority report for the abolish-
3 ment of the office of Attorney General in the Constitution.

4 If there is one thing that I have read and heard
5 more than anything else since I have been a delegate to
6 this Convention, it is the theory espoused by most poli-
7 tical scientists and theorists to the effect that there
8 should be no checks and balances within any branch of the
9 government, but only checks and balances between the
10 branches of the government.

11 It is significant to note that every witness
12 who appeared before the executive committee in opposition
13 to the election of an Attorney General relied principally,
14 if not solely, on this doctrine, that there should be no
15 checks and balances within any one branch of the govern-
16 ment.

17 In fact, the Commission draft echoed the same
18 doctrine and premised its recommendation on the fact that
19 an elected Attorney General would be a check and balance
20 within the executive department.

21 We all know what the commission's recommendation

1 was, but do we know the reasons the commission had for
2 supporting this recommendation?

3 I think it will be of interest to this Committee
4 to know what the reasons were the commission based its
5 recommendations upon.

6 Governor Tawes, Governor Lane, and McKeldin
7 appeared before the commission as witnesses, and were
8 asked if the Attorney General should be elected or if the
9 Attorney General should be appointed.

10 Governor Lane expressed no preference. Governor
11 McKeldin, before the Commission, favored election, and
12 Governor Tawes, although the record is not too clear, also
13 favored election.

14 Now, based upon this testimony, and this
15 testimony alone, and one casual comment from a 1953
16 Soboloff-Stockbridge Report, the commission, without
17 any other evidence, recommended that the Attorney General
18 not be provided for in the Constitution.

19 I am sure that you will agree with me that I
20 would not be indulging in understatement if I were to
21 suggest that the evidentiary support for the commission

1 recommendation was less than overwhelming.

2 I am also sure that you will agree that the
3 commission, in considering whether to abolish or retain the
4 office of Attorney General in the Constitution should have
5 had the benefit of at least one person who had held the
6 office of Attorney General.

7 In marked contrast to the consideration given
8 the office of the Attorney General by the Commission,
9 the Committee on the Executive Branch heard the
10 testimony of many knowledgeable and distinguished citizens,
11 including Hal Hammond, Chief Judge of the Court of
12 Appeals of Maryland; Thomas B. Finan, Associate Judge of
13 the Court of Appeals of Maryland; William B. Walsh, former
14 Associate Judge of the Court of Appeals of Maryland;
15 C. Ferdinand Sybert, delegate to this Convention, and former
16 Associate Judge of the Court of Appeals of Maryland.
17 All of these distinguished citizens were elected Attorneys
18 General of this State, and they opposed to a man the
19 recommendation that the Office of Attorney General not be
20 provided for in this Constitution.

21 I might add that their opposition was based on

1 their experience in the office, and not on personal con-
2 siderations, since all of these men are far removed from
3 the political arena.

4 Interestingly enough, not a witness who appeared
5 before the Committee on the Executive Branch in opposition
6 to an elected Attorney General offered a scintilla of evi-
7 dence which intimated or suggested that the office of
8 Attorney General as presently constituted has ever dis-
9 rupted, impeded, frustrated or interfered with the author-
10 ity of the executive branch of the government. In fact,
11 Governor Agnew in his address before this Convention, and
12 in his address before the Executive Committee, acknowledged
13 that he had received maximum cooperation from the office
14 of the Attorney General.

15 Dr. Jean Spencer, a highly respected political
16 scientist who is heading the Governor's Task Force on
17 the Reorganization of the Executive Department, testified
18 that the Attorney General as a quasi-judicial
19 official should have some degree of independence, and she
20 would not quarrel with him being elected.

21 To the credit of the majority, after reviewing

1 all the evidence with respect to the varied duties of
2 the office of Attorney General, it was found as a fact
3 that the office of Attorney General did not really fit
4 into any particular branch of State government.

5 It is obvious that this finding by the Commit-
6 tee on the Executive Branch completely destroys and deprives
7 of vitality the arguments advanced by the Commission draft,
8 the political scientists and others who advise that the
9 office of the Attorney General not be provided for in the
10 Constitution because it is an inappropriate check and
11 balance within the executive department.

12 Page 8 of the majority report, beginning at line
13 22, reads in pertinent part as follows:

14 Under the present Constitution and laws, the
15 Office of the Attorney General does not fit neatly
16 into any particular branch of State Government. For example,
17 the office serves a legislative role when the Attorney General
18 acts as counsel for the General Assembly; the office serves
19 an executive role when the Attorney General acts as counsel
20 for the Governor and when he acts as counsel for the
21 administrative agencies of the State.

1 In amplification of the duties of the Attorney
2 General I invite your attention to page 3 of the minority
3 report, where the duties of the Attorney General are set
4 forth in more detail and particularity.

5 I might also add that in addition to acting as
6 counsel for the legislature and counsel for the executive
7 branch, the Attorney General acts as counsel for the
8 judicial branch.

9 At present in the federal courts, the Supreme
10 Bench of Baltimore City is being sued for the way the
11 juries are constituted in Baltimore City, and there was a
12 case in which the Court of Appeals was sued with respect to
13 their rule-making powers. In both of these cases, the
14 Attorney General represented the courts.

15 It is manifestly clear that since the office
16 of Attorney General is counsel to all three branches of
17 government, it cannot be pigeon-holed solely within the
18 executive branch.

19 Now, although the majority report conceded, as
20 it must, that the Attorney General is not an elected official
21 within the orbit of the executive branch, it attempted to

1 bring this office within the executive branch by the simple
2 expedient of claiming that the Governor should have a right
3 to hire his own lawyer.

4 The majority report at page 8, lines 34 to 37
5 reads as follows: "The Committee on the Executive Branch
6 feels that a necessary concomitant of the Governor's
7 position as chief executive of the State is the ability
8 to hire his own lawyer."

9 Now, with respect to the right of the Governor
10 to hire and appoint his own lawyer, the minority does not
11 disagree, as long as the lawyer the Governor hires and
12 appoints is not the Attorney General.

13 In many States, including New York and Michi-
14 gan, where the Attorney General is elected, the Governor
15 has his own private counsel, and rightfully so. However,
16 the duties performed by the Governor's private counsel are
17 vastly different from those performed by the Attorney
18 General, and he is the chief legal officer for the entire
19 State.

20 In the present Constitution there is a provision
21 which might be construed as prohibiting the Governor from

1 hiring his own private counsel without approval of the
2 General Assembly.

3 The minority, in its proposed draft, will suggest
4 the removal of this alleged prohibition against the Governor
5 hiring his own private counsel.

6 Now, during the debate on the legislative
7 article we heard the argument that each county should have
8 a delegate to call its own. During the debate on the
9 judicial article, we heard the argument that each county
10 should have a district and superior judge to call its own.

11 Now, ladies and gentlemen, in debating the
12 executive article, we hear the argument that the Governor
13 should have a lawyer he can call his own.

14 To put it bluntly, and with no intention of
15 humor or whimsy, I suggest to you that if the Governor is
16 given authority to appoint the Attorney General to serve at
17 his pleasure, that is exactly what he will get, a lawyer
18 he can call his own.

19 Now, this brings into focus the gut issue for
20 this Commi-tee, and that is, should the Constitution pro-
21 vide that an appointed Attorney General, for an appointed

1 Attorney General to serve at the pleasure of the
2 Governor, or should the Constitution provide for a Consti-
3 tutionally elected Attorney General to serve at the pleasure
4 of the people?

5 I suggest to you, fellow delegates, that the
6 Constitution, this Constitution should provide for an
7 independent, Constitutionally elected Attorney General, not
8 a lawyer the Governor can call his alone; but a lawyer
9 the people can call their own.

10 The overwhelming weight of opinion in other
11 States favors the elected Attorney General. In support
12 of this statement, I will read from page 2 of the Minority
13 Report, lines 6 to 18:

14 "Forty of our sister States have a constitu-
15 tionally elected attorney general, and two others have statu-
16 tory provisions for his election. Two of these, New York
17 and Michigan, recently had constitutional conventions which
18 voted to retain the office as a constitutionally elected one,
19 thereby affirming the fact that such status is not incom-
20 patible with modern efficient State government.

21 In two of the States where the Attorney General is not

1 elected, Maine and Alaska, it is interesting to note
2 that the incumbents have recommended that the office not be
3 an appointed one."

4 I would like to call to the attention of this
5 committee a few comments from Attorneys General of other
6 States with respect to the question of the elected Attorney
7 General vis-a-vis the appointed Attorney General.

8 In the 1863 Michigan Convention, which provided
9 for an elected Attorney General, it was said -- and I
10 quote: "We favor the election of the Attorney General, the
11 chief law enforcement officer of the State. In a represen-
12 tative government, appointment of the chief law enforcement
13 officer would place him in a position of obligation which
14 would make his duties more difficult. If the Attorney
15 General were appointed, he would be subjected to the
16 influences of the appointing authority. Presently he is
17 able to make an independent legal judgment, which might
18 differ from the political decisions of other members of the
19 executive branch."

20 The goernor has to make many decisions. Many
21 of them are political decisions. I don't think that

1 the best interests of the State can be served if the
2 Attorney General is appointed so that he must confirm
3 the political decisions of the governor. I think that the
4 people of the State of Michigan have a right to the ser-
5 vices of an attorney general who can say no when the law
6 and the interpretation of the law demand that he say no."

7 The Attorney General of Ohio stated: "The
8 Attorney General's office should be run as a law office,
9 with a completely objective approach to the legal problems
10 of an administration, and should not be relegated to a
11 position of house counsel, finding ways and means to support
12 executive policy. By being elected, the Attorney General
13 is responsible only to the people of the State, and this,
14 to my way of thinking, is as it should be."

15 The Attorney General of Ohio commented: "When
16 you place the chief legal officer of the State under the
17 appointing power of the Governor, you rob him of the
18 complete independence that is his when elected by the people.
19 It is this very independence which results in the
20 fearless and efficient administration of justice."

21 The Attorney General of Maine, who is appointed

1 by the legislature, made the following comment -- and I
2 quote:

3 "If the Attorney General is appointed by the
4 governor there is always the question of whether or not
5 he becomes in thenature of a legal rubber stamp and a
6 convenient oracle of thelaw for the Governor's purpose.
7 I think I am one of those who would like to see the Attorney
8 General in Maine elected at large by the people."

9 The Attorney General of Alaska, who is appointed
10 by the Governor, had this to say: "Again, from my
11 own experience, if I were given the choice, I would be
12 inclined to favor the elective position over the
13 appointive, for the simple reason that I believe that
14 a lawyer can function more effectively if he has freedom
15 of action in his own specialized field."

16 In addition to the Attorney General's statement
17 from Alaska, who was appointed by the Governor, the Attorney
18 General of Hawaii, who is appointed by the governor, has
19 recently indicated that it would be better as a matter of
20 principle to have an attorney general for the whole State,
21 rather than just the executive department.

1 In closing, I would like to quote from a state-
2 ment made by Louis J. Lefkowitz, Attorney General for
3 New York, to the New York Constitutional Convention in
4 favor of the elected Attorney General.

5 "To sum it up, an elected Attorney General
6 has a measure of independence and a sense of personal
7 and direct responsibility to the public. The elected
8 official has a natural and impelling desire to be creative
9 and to exercise broader initiative in the service of the
10 public. He is free of the fear of dismissal by any
11 superior official if he should exercise contrary indepen-
12 dent judgment. He is in the best position to render maximum
13 service to the people and impartial advice to the
14 governor, the legislature, and state departments and agencies.
15 He can appear in court without fear of favor, an attorney
16 in the fullest and finest sense of the word."

17 Ladies and gentlemen of this committee, Mr.
18 Justice Holmes has been frequently quoted in this Convention
19 as saying "The law is not logic, but experience."

20 I suggest to you that we cannot be blind to the
21 fact that experience in this State and other States

1 unmistakably teaches that an elected Attorney General,
2 clothed with the independence and responsibility to the
3 people, is far superior to an appointed Attorney General,
4 subservient and accountable only to the Governor.

5 Therefore, on behalf of the minority committee,
6 I urge you to retain the office of Attorney General in
7 this Constitution.

8 Mr. Chairman, I will yield to questions.

9 THE CHAIRMAN: Are there any questions of the
10 minority spokesman?

11 Delegate Sickles.

12 DELEGATE SICKLES: I wonder if the spokesman
13 for the minority would explain in just a minute where
14 the assistant attorneys general are located, where they
15 are employed, and what their functions are? I am a bit
16 confused. I was looking at the report of the Attorney
17 General rather quickly, and I have a list of 12 in the
18 civil division and 10 in the criminal division. I know I
19 read somewhere else that there are some more. Where are they
20 located, and what do they do?

21 DELEGATE MASON: They have, as you indicated,

1 12 in the civil division and 10 in the criminal division.

2 They have about 30-some, I don't know the exact
3 number -- it is in the report -- assigned to the other
4 agencies. Most of them are assigned to the State Roads
5 Commission. They work in condemnation cases for the State
6 Roads Commission.

7 They do have other attorneys assigned to the
8 Department of Motor Vehicles and some other State agencies.

9 DELEGATE SICKLES: Are they physically located
10 with these other agencies, or are they physically located
11 in the house of the Attorneys General?

12 DELEGATE MASON: They are physically located
13 with the other agencies, although they come under the
14 supervision of the Attorney General; and I might add
15 that some of them are paid out of the budget of these agen-
16 cies. Now, to take advantage of federal funds, a lot of
17 these attorneys are paid out of the budgets for the
18 agencies that are handling federal work.

19 THE CHAIRMAN: Delegate Sickles.

20 DELEGATE SICKLES: By what method does the
21 Attorney General supervise the performance of these

1 Attorneys General who are not under his direct control?

2 DELEGATE MASON: Every opinion written by an
3 Attorney General, whether he is in the main office or in
4 an office of another part of the Executive Branch, must be
5 reviewed by the Attorney General's Office.

6 THE CHAIRMAN: Delegate Sickles.

7 DELEGATE SICKLES: Does this mean, then, that
8 these attorneys are available on a day-to-day
9 basis to counsel with and advise the various
10 departments with which they work?

11 DELEGATE MASON: They are available each day
12 to advise with the departments for whom they work.

13 DELEGATE SICKLES: Do I understand from your
14 previous answer that they then write up a memorandum on
15 every bit of advice they give in order to make sure it is
16 uniform and send it back to headquarters?

17 DELEGATE MASON: No. I don't think it works that
18 way; but they are available to the department head to whom
19 they are assigned and any information that the department
20 head wants legal advice on, he has the attorney from whom
21 he can get this advice.

1 THE CHAIRMAN: Delegate Sickles.

2 DELEGATE SICKLES: Upon what basis are their
3 promotions handled? Who makes the recommendations; the
4 department head for which he works, or does the Attorney
5 General himself make this recommendation?

6 THE CHAIRMAN: Delegate Mason.

7 DELEGATE MASON: When you say "promotions,"
8 I don't understand. There is usually one line of authority.
9 You have a Chief of the Criminal Division, you have a
10 Chief of the Civil Division. You have a Deputy Attorney
11 General, and the other Attorneys General are assigned to
12 various agencies that are not in the main office, and they
13 are assigned at a fixed rate of pay.

14 THE CHAIRMAN: Delegate Sickles.

15 DELEGATE SICKLES: Doesn't the Attorney General
16 or someone have to make determination of the quality of
17 service that is being performed by the assistant attorneys
18 general?

19 I am just concerned as to how this is handled
20 administratively.

21 THE CHAIRMAN: Delegate Mason.

1 DELEGATE MASON: The Attorney General has a
2 deputy and principal administrative assistance who evaluates
3 the work of each assistant and makes reports regularly
4 to the Attorney General, and the Attorney General himself
5 interviews regularly the attorneys assigned to the various
6 agencies.

7 THE CHAIRMAN: Delegate Sickles.

8 DELEGATE SICKLES: Are you suggesting then that
9 there is daily contact between the Attorney General and
10 the various attorneys who are working for the respective
11 agencies?

12 DELEGATE MASON: No, I am not suggesting that.

13 I don't say they have daily contacts, but they
14 have frequent contacts in order to keep abreast of what
15 is happening in the State as far as the legal matters go.

16 THE CHAIRMAN: Delegate Sickles.

17 DELEGATE SICKLES: Would you say that he exer-
18 cises a degree of supervision, sufficient to know what
19 the quality of the work is that they are performing?

20 DELEGATE MASON: I feel reasonably sure he does
21 exercise that type of supervision, and if the agency was

1 not receiving the attention that they should receive, I am
2 sure they would soon let the Attorney General know about it.

3 THE CHAIRMAN: Delegate Sickles.

4 DELEGATE SICKLES: I have one last question.
5 Isn't asking all these elected Attorneys General around
6 the country like going to the Devil to discuss hell?
7 They would have to be in favor of it, wouldn't they?

8 DELEGATE MASON: I don't know what they would
9 do if they went to the Devil and discussed hell, but most
10 of the Attorneys General around the country are in favor,
11 as I indicated, of elected attorneys general, and I think
12 they have stated good and cogent reasons for being for the
13 elected attorney general.

14 THE CHAIRMAN: Delegate Sickles.

15 DELEGATE SICKLES: Do you, or would you agree
16 that the making of the Attorneys General run for office
17 in effect makes them a politician and that this means that
18 his activities might be in some way affected by his attempt
19 to please the public?

20 DELEGATE MASON: Well, if he runs for office,
21 he necessarily is in the political arena. I don't know

1 to what degree that would affect the performance of his
2 duties as Attorney General.

3 If you will look back over the years, some of
4 the most outstanding men in the State have been Attorneys
5 General, and they have been elected Attorneys General. So to
6 what degree that would affect his efficiency as an Attorney
7 General I cannot say, but we have had exceptionally good
8 men who have been Attorneys General and who have gone on
9 to high office in this State.

10 THE CHAIRMAN: Delegate Sickles.

11 DELEGATE SICKLES: Don't you believe as I do,
12 as a fellow member of this bar, that we who are members of
13 the bar have a code of ethics which is quite high, and
14 that independent of whether we are public servants
15 through the elected process, or whether we are appointed by
16 someone else, that we will keep the requirements of this
17 standard?

18 DELEGATE MASON: I agree with you completely,
19 but I know of no Attorney General who has not maintained
20 those high standards and code of ethics.

21 THE CHAIRMAN: Delegate Sickles.

1 DELEGATE SICKLES: I am suggesting perhaps you are
2 right, but wouldn't the same thing be really true if a
3 member of the bar living up to the code of ethics were
4 also appointed by someone else?

5 DELEGATE MASON: I don't understand you. What
6 code of ethics are you referring to, and what would
7 an appointed Attorney General do that would violate the
8 code of ethics?

9 DELEGATE SICKLES: It seems to me the thrust
10 of your discussion was that somehow the Attorney General
11 appointed by the governor would become, quote, "the governor's
12 man," and this somehow was going to affect his judgment and
13 was going to affect the kinds of opinions that he would
14 render.

15 I am just suggesting that as a fellow member
16 of the bar, that we ought to suggest to the public generally
17 that we would not be so affected, and that whether he were
18 elected and had to go to the people, that we would not make
19 statements and do things just to please the public, but
20 would do what we think is right legally; and I think an
21 appointed Attorney General would do the same thing.

1 I am asking you if you would agree with that
2 premise.

3 DELEGATE MASON: That is a very long and
4 involved question. If you will divide your question, I
5 will try to answer it.

6 THE CHAIRMAN: Delegate Sickles.

7 DELEGATE SICKLES: My question I think simply
8 is this: I think that a member of the bar has a duty to
9 give legal opinions which are in his best opinion right
10 and proper. You suggest that if he is appointed by the
11 governor, somehow this responsibility and code by which we
12 all live would be violated, and he would become the
13 governor's man; but you suggest that if he were running for
14 election that he would not give in to these temptations.
15 It seems to me that if we do live by this code, and the
16 kind of people who are selected for an Attorney General
17 would be such that they could be in public scrutiny
18 it would make no difference whether he were appointed or
19 whether he were elected, as long as he lived up to the code
20 that you and I live up to.

21 DELEGATE MASON: I presume that was a question

1 also, but it so-nded more like a speech; but I would
2 only say this: That an elected Attorney General has more
3 freedom of action, and independence, than an appointed
4 Attorney General.

5 THE CHAIRMAN: Delegate Sickles.

6 DELEGATE SICKLES: That leads me to my last
7 question: Do you think the Attorney General ought to be
8 allowed to continue his private practice of law?

9 DELEGATE MASON: I don't think so. I don't think
10 there is any prohibition against it, as long as his pri-
11 vate practice is not in conflict with any of his duties
12 as the Attorney General, like any other State official.
13 He can perform it, as far as the law is concerned at the
14 present time.

15 THE CHAIRMAN: Delegate Sickles.

16 DELEGATE SICKLES: Do I understand your answer
17 would be that you would not oppose the proposition that
18 he should be a full time State officer and not be per-
19 mitted to continue his law practice?

20 DELEGATE MASON: I wouldn't oppose that at all.

21 DELEGATE SICKLES: Thank you.

1 THE CHAIRMAN: Any further questions of the
2 minority spokesman?

3 Delegate Della.

4 DELEGATE DELLA: Delegate Mason, is it my
5 understanding that you are suggesting that the Governor
6 be given the authority to advise him?

7 DELEGATE MASON: That is exactly correct, Dele-
8 gate Della.

9 In several States where we have the elected
10 Attorney General, the Governor has his private counsel.
11 Now, in Maryland, all governors have had their private
12 counsel, including the present governor. They don't carry
13 him on the pay roll because of a Constitutional, apparent
14 Constitutional prohibition; but all governors have what
15 they call an informal counsel.

16 Now, in New York they have an elected Attorney
17 General and the governor has private counsel; but the
18 duties of the private counsel are restricted. He only acts
19 in personal matters for the Governor. He does not represent
20 the State in any cases in court. He acts about 15 percent
21 of the time in legal matters dealing with extradition,

1 writing speeches for the governor, and giving him informal
2 advice on his legislative program; but he does not go into
3 court under any circumstances.

4 THE CHAIRMAN: Delegate Della.

5 DELEGATE DELLA: Could he give advice to the
6 other departments of the executive department?

7 DELEGATE MASON: No. The only advice he can
8 give would be the informal advice he would give to the
9 Governor, but the Attorney General would be the official
10 lawyer for the State. He would give advice to all other
11 departments.

12 THE CHAIRMAN: Any other questions of the minority
13 spokesman?

14 Delegate Hanson.

15 DELEGATE HANSON: Delegate Mason, to follow
16 up some of the questions which Delegate Sickles was
17 asking, do you not think an Attorney General who was
18 appointed by the Governor, who found himself in a position
19 that would compromise his professional ethics, would he not
20 resign in such a situation?

21 DELEGATE MASON: Well, he should, yes.

1 THE CHAIRMAN: Delegate Hanson.

2 DELEGATE HANSON: Is a governor not entitled
3 to legal assistance of his own choosing in developing
4 his program, and seeing that his program is implemented in
5 a proper and legal way?

6 DELEGATE MASON: The governor is entitled to
7 legal assistance, but not necessarily of his own choosing,
8 to develop his programs. I think that is the job and func-
9 tion of the person elected by the electorate of the State
10 as the official lawyer for the State.

11 Now, the Governor's private counsel can advise
12 him with respect to his legislative program, but this ad-
13 vice is not binding on State government.

14 THE CHAIRMAN: Delegate Hanson.

15 DELEGATE HANSON: I am not a lawyer, Delegate
16 Mason, and it just perplexes me as to why I should vote
17 for a man for governor who comes before the people and
18 describes the program that he wants to establish, and then
19 possibly by chance or design, however the case may be,
20 he ends up with an Attorney General who is opposed to his
21 program, and he is left without an attorney who is an

1 integral part of the government. Why should that attorney
2 be elected rather than appointed? I am afraid I just
3 don't understand that.

4 DELEGATE MASON: I thought I indicated that by
5 being elected he would have that degree of independence
6 that he would not have -- that he would not be under
7 the influence of the Governor in matters which were against
8 his own conscience and against the law; so he can act free
9 and he can give impartial advice.

10 You are suggesting that an attorney general,
11 because he is elected, would not cooperate with the governor;
12 but every witness who appeared before our committee, and
13 the governor himself, says they received the maximum coopera-
14 tion from the attorney general.

15 THE CHAIRMAN: Delegate Hanson.

16 DELEGATE HANSON: Then why do you tell us that
17 every governor has had his own private counsel? Why in
18 the world does the governor need a private counsel if there
19 is an attorney general? Why can't we organize the govern-
20 ment in such a way that the governor and the Attorney General
21 can be expected to work together?

1 Why should we amend the Constitution to creat
2 a second lawyer?

3 DELEGATE MASON: It is not a question of the
4 governor having an additional lawyer. This additional
5 lawyer is 85 percent a political adviser. He handles
6 things like extradition hearings, clemency hearings; he
7 writes speeches for the governor, and he advises the
8 governor as far as his legislative program is concerned.
9 The governor needs somebody. Maybe he has a lawyer-client
10 relationship with him. He doesn't have that relationship
11 with the attorney general, who is elected by the people.

12 THE CHAIRMAN: Delegate Hanson.

13 DELEGATE HANSON: What about the relationship
14 in terms of legal regulations, the assurance that things are
15 in proper legal order between the governor and his depart-
16 ment head? Should he not have a legal representative of
17 his own choosing to work with the department heads and to
18 work with counsel in the departments? Why should this be
19 an elected person rather than a person appointed by the
20 governor?

21 DELEGATE MASON: The private counsel for the

1 governor certainly could work with the department heads
2 in this unofficial and informal manner. He can advise
3 the governor as to how he thinks he could translate his
4 programs into legal legislation; but when it comes to an
5 official act in the State, that is where the attorney
6 general steps in, because the attorney general not only
7 represents the governor, or the executive department, but
8 he represents the legislature. So would you suggest the
9 legislature have their own lawyer and the judiciary have
10 their own lawyer?

11 THE CHAIRMAN: Delegate Hanson.

12 DELEGATE HANSON: If you are asking me the
13 question, I would assume that the judiciary is amply popu-
14 lated with lawyers. As to the General Assembly, that might be
15 a good idea. But back to my question, which -- it resolves
16 around the question of a general counsel in a department, or
17 counsel in a department making a ruling, or the attorney
18 general making a ruling regarding the intent of the legis-
19 lature, or the manner in which regulations must be issued,
20 all the internal legal housekeeping that has to go on
21 in a governmental organization, in an administration,

1 in which legal opinions are written, but they are more
2 than legal opinions. They are also public policy, determin-
3 ing the manner in which the administration will proceed.
4 If the governor is intending to implement a program, should
5 this kind of counsel not be available to him, and not
6 be of his own choosing?

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1 DELEGATE MASON: This kind of counsel is
2 available to him as the Attorney General. Now these
3 programs to which you address yourself are programs set
4 up by the legislature, and the Attorney General is the
5 one who has to interpret what the law means and trans-
6 late it into these particular programs for the governor.

7 Now, you are suggesting that the legislature
8 have their own lawyers so they can determine what the
9 law is, that the governor have his lawyer so he can de-
10 termine what the law is. Then we would fragment the
11 legal work of the state.

12 THE CHAIRMAN: Delegate Hanson.

13 DELEGATE HANSON: I don't believe that is what
14 I was suggesting altogether. What I was attempting to
15 get you to answer, I will try one more time, is why
16 should the governor in the making of the legal regulations
17 incident to the smooth operation of the administration,
18 not be entitled to a chief legal officer of his own
19 choosing?

20 What is there about election that makes it
21 better for an attorney, an elected attorney general, to
perform that policy legal function than for an appointed

1 attorney general to perform it?

2 THE CHAIRMAN: Delegate Mason.

3 DELEGATE MASON: Now, if the attorney
4 general is appointed for the governor, and he makes those
5 decisions for the governor, there would be a possibility
6 of a conflict, if he is appointed by the governor, with
7 the legislature in some areas.

8 He certainly would go along with the governor
9 in all of his decisions, in cases of that type, so we
10 have an elected attorney general to represent not only
11 the governor in the executive departments but also the
12 legislative departments too.

13 THE CHAIRMAN: Are there any further
14 questions?

15 Delegate Clagett.

16 DELEGATE CLAGETT: Delegate Mason, when
17 the governor has under consideration the veto of a
18 bill of the General Assembly, who is his legal counsel?

19 THE CHAIRMAN: Delegate Mason.

20 DELEGATE MASON: Usually the attorney
21 general. He determines whether the law is Constitutional

1 or not, but if it is a question of policy and the
2 governor wants to veto it as a matter of policy, he can
3 have other advisers. It wouldn't be a legal question.

4 THE CHAIRMAN: Delegate Clagett.

5 DELEGATE CLAGETT: When the General Assembly
6 attempts to override the veto of the governor, who is the
7 legal counsel?

8 THE CHAIRMAN: Delegate Mason.

9 DELEGATE MASON: Well, if legal counsel is
10 needed the attorney general is the legal counsel.

11 THE CHAIRMAN: Delegate Clagett.

12 DELEGATE CLAGETT: Isn't that a possible
13 conflict of interest situation for the attorney general?

14 THE CHAIRMAN: Delegate Mason.

15 DELEGATE MASON: Not for an elected attorney
16 general. It would certainly be a possible conflict for
17 an appointed attorney general.

18 THE CHAIRMAN: Delegate Clagett.

19 DELEGATE CLAGETT: Where lies the difference?

20 DELEGATE MASON: Well, I think it is quite
21 obvious. If I appointed an attorney general I certainly

1 would have greater influence and control over his action.
2 than if he were elected by the people.

3 THE CHAIRMAN: Delegate Clagett.

4 DELEGATE CLAGETT: Whether appointed or
5 elected, as he attempts to advise two opposing parties,
6 isn't that a conflict of interest situation?

7 THE CHAIRMAN: Delegate Mason.

8 DELEGATE MASON: Nto necessarily; as long
9 as he gives them the objective and impartial advice.

10 THE CHAIRMAN: Delegate Clagett.

11 DELEGATE CLAGETT: And if that objective and
12 impartial advice is contradictory, one to the other, isn't
13 this the conflict of interest situation?

14 THE CHAIRMAN: Delegate Mason.

15 DELEGATE MASON: Well, at least they will
16 all be aware of what the impartial objective advice
17 is and if necessary then, the attorney general, he will,
18 as he has done in other cases, appoint outside counsel to
19 represent one of the other parties.

20 THE CHAIRMAN: Delegate Clagett.

21 DELEGATE CLAGETT: And that would be his only

1 solution?

2 THE CHAIRMAN: Delegate Mason.

3 DELEGATE MASON: I don't know if that would
4 be the only solution, but that would be a solution.

5 THE CHAIRMAN: Delegate Clagett.

6 DELEGATE CLAGETT: But that appointed counsel
7 is appointed by the Attorney General who has found
8 himself in a conflict of interest situation?

9 Is that correct?

10 THE CHAIRMAN: Delegate Mason.

11 DELEGATE MASON: Well, I wouldn't agree that
12 the attorney general has found himself in a conflict of
13 interest position. If it happens sometimes he might have
14 conflicts within departments or maybe you want an inter-
15 pretation of what the law should be so the attorney
16 general will have outside counsel appointed to bring the
17 case to court so they can have a determination of just
18 what the particular law is, and that has happened quite
19 frequently.

20 THE CHAIRMAN: Delegate Byrnes.
21

1 DELEGATE BYRNES: I think you are familiar,
2 sir, with the very recent judgment made in the attorney
3 general's office to take on appeal a very sensitive and
4 critical issue involving the applicability of certain
5 tax laws of the country to state employees, the question
6 of interstate commerce, and essentially involving millions
7 and millions of state dollars.

8 My question conceptually, as I did with the
9 comptroller, dividing the executive authority, who has
10 or would have the final say as to whether or not that
11 case would be appealed to the Supreme Court?

12 Would it be the attorney general or would it
13 be the governor? How, I can see probably in this case
14 he concurred, that they should both agree it should go
15 up. Who would have the final say and who should have
16 the final say?

17 THE CHAIRMAN: Delegate Mason.

18 DELEGATE MASON: The Attorney General as
19 chief legal officer for the state has the final say and
20 he should have the final say. In the case to which you
21 advert, the attorney General had the agreement of the

1 governor that they should intercede in this wage and
2 labor case.

3 THE CHAIRMAN: Delegate Byrnes.

4 DELEGATE BYRNES: Moving on, sir, to another
5 problem, in your amendment, if I may address to that,
6 which was distributed to us recently, you attempt to
7 freeze into the Constitution what I think is really an
8 administrative decision, in that the Attorney General's
9 office should handle the appeals of criminal cases, or
10 the appeals of cases where the state has an interest.

11 Why do you want that in the Constitution,
12 if I may ask?

13 THE CHAIRMAN: Delegate Mason.

14 DELEGATE MASON: Well, I don't want to say it
15 has been in there for 103 years, that is why I want it,
16 but if you have any familiarity, if you are familiar
17 with the workings of the Attorney General's office in
18 the state of Maryland, as far as criminal cases are
19 concerned, you realize we need on place where we can have
20 decisions that are consistent.

21 If we let every state's Attorney appeal and

1 take his own cases to the Court of Appeals, you would
2 have no set fixed law with respect to these cases.

3 In fact, we only have about five, what we might
4 call, full-time state's attorneys in the whole state of
5 Maryland. Mostly your state's attorneys are part-time.
6 They don't have the staff or the manpower to handle
7 appeal cases. It has been proven that a fresh approach
8 on criminal appeals is better.

9 THE CHAIRMAN: Delegate Byrnes.

10 DELEGATE BYRNES: You recommended though, I
11 believe, in the majority recommendation, I don't know
12 that you have dissented from that, that state's attorneys
13 may be established, or districts may be established by
14 the General Assembly.

15 I would think the intent of that is to in the
16 future eliminate this problem that you just referred to.
17 My point is, are you really strong on this one point, that
18 the attorney general's office, rather than the state's
19 attorney's office, should handle appeals of criminal
20 cases?

21 Would you object to an amendment deleting that

1 one point?

2 THE CHAIRMAN: Delegate Mason.

3 DELEGATE MASON: I think there is a very good
4 reason for having the Attorney General handle all those
5 appeals, but we do have cases, if a state's attorney is
6 sufficiently interested in a case, we permit him to go
7 to the Court of Appeals, argue this case.

8 We confer with him on the brief. If he has
9 some additional points he wants to raise, he can do that,
10 so we do work in complete cooperation with the state's
11 attorneys. But I think the appeals should rest with
12 the Attorney General's office.

13 THE CHAIRMAN: Delegate Byrnes.

14 DELEGATE BYRNES: Finally, this, sir: You
15 suggest to us that the Attorney General has the responsi-
16 bility to act as counsel for the people, act as counsel
17 for the judiciary, and also for the legislative branch
18 of the government. And I would ask you what your authority
19 for that is, other than the statement made by Attorney
20 General Burch.

21 Before you answer, I would like to refer you to

1 page 42 of the most recent -- you don't have it there,
2 I'm sorry, -- Maryland Manual, where you recite, not
3 you personally but the office recites what it perceives
4 to be its objectives.

5 It recites six of them and nowhere do I see
6 any reference whatever to these three added objectives,
7 if I may, except in the final one, where it says this: To
8 approve as to form the legal sufficiency all legislature
9 passed by the General Assembly after its presentation
10 to the governor.

11 This suggests to me that again he is representing
12 the governor in that role, and no one else. But I would
13 ask then, keeping in mind your statement of objectives, and
14 I say again, it does not say anything about representing
15 the judiciary, the legislative branch or the people, but
16 speaks only in terms of representing the executive branch
17 and the agencies.

18 Where will I find the authority for your
19 statement and General Burch's statement that he somehow
20 has an additional responsibility?

21 THE CHAIRMAN: Delegate Mason.

1 DELEGATE MASON: Well, of course you won't
2 find it in the Maryland Manual. We don't consider the
3 Maryland Manual as authority for the duties of the
4 Attorney General, but I invite you to turn to page three
5 of the minority report and you will find the duties of
6 the Attorney General amplified on that page, and it
7 specifically sets forth what he does in the legislative
8 branch, what he does in the judicial branch, and what he
9 does with the executive branch.

10 THE CHAIRMAN: Delegate Hardwicke.

11 DELEGATE HARDWICKE: Delegate Mason, you
12 stated that the Attorney General is the chief legal
13 officer of the state. What quality do you believe is most
14 important in the selection of this legal officer?
15 What quality may I ask you sir, do you believe is the one
16 that will most help him to be the best legal officer
17 available?

18 THE CHAIRMAN: Delegate Mason.

19 DELEGATE MASON: Well, I can't think of any
20 one particular quality. Of course, he has to be a
21 good attorney, but by being a good attorney doesn't

1 necessarily make him a good Attorney General.

2 I think there are several qualities he must
3 have. He must be a good public servant, with knowledge
4 of the Attorney General's office.

5 THE CHAIRMAN: Delegate Hardwicke.

6 DELEGATE HARDWICKE: Is legal competence the
7 most important quality?

8 THE CHAIRMAN: Delegate Mason.

9 DELEGATE MASON: Legal competence, I would
10 say, is one of the most important qualities.

11 THE CHAIRMAN: Delegate Hardwicke.

12 DELEGATE HARDWICKE: In the committee delibera-
13 tions did you study any campaign literature issued by
14 any attorneys general?

15 THE CHAIRMAN: Delegate Mason.

16 DELEGATE MASON: No, we didn't.

17 THE CHAIRMAN: Delegate Hardwicke.

18 DELEGATE HARDWICKE: Have you ever personally see
19 any campaign literature of a person running for this
20 office in which he stressed his legal competency?

21 THE CHAIRMAN: Delegate Mason.

1 DELEGATE MASON: I have seen campaign
2 literature for persons running for this office where
3 they have had the endorsements of hundreds of attorneys
4 who have endorsed him for the office, so I would presume that
5 they think he is legally competent.

6 THE CHAIRMAN: Delegate Hardwicke.

7 DELEGATE HARDWICKE: May I ask you whether
8 or not the candidate for Attorney General is not generally
9 selected as part of a ticket?

10 THE CHAIRMAN: Delegate Mason.

11 DELEGATE MASON: That is correct.

12 THE CHAIRMAN: Delegate Hardwicke.

13 DELEGATE HARDWICKE: May I ask you further
14 whether or not his selection on that ticket is based on his
15 legal competency or upon his, quote, getting power for
16 the ticket on which he is a part, unquote?

17 THE CHAIRMAN: Delegate Mason.

18 DELEGATE MASON: I would imagine it would be
19 a combination of both. You wouldn't select a person
20 completely for legal competency if he couldn't get
21 any votes so I think it would be a combination of both.

1 THE CHAIRMAN: Delegate Hardwicke.

2 DELEGATE HARDWICKE: May I ask you whether
3 or not the area of the state in which this person lives is
4 not a factor to be taken into consideration in determining
5 whether he is included on a ticket or not?

6 THE CHAIRMAN: Delegate Mason.

7 DELEGATE MASON: I have heard it said that is
8 a factor, but I would assume we have competent lawyers
9 in all areas of the state.

10 THE CHAIRMAN: Delegate Hardwicke.

11 DELEGATE HARDWICKE: So don't you concede
12 by admitting that the vote-getting factor, the area of
13 the state factor, that these factors are being used in a
14 very important way in determining who the Attorney General
15 shall be, and not his legal competency?

16 THE CHAIRMAN: Delegate Mason.

17 DELEGATE MASON: No, I won't concede to that.
18 I think his legal competency is always considered, but
19 these other factors are added to that before he is
20 selected by whoever is selecting the ticket.

21 I don't think a person with no legal competence

1 would be selected as an attorney general. If you review
2 the record of the outstanding attorney generals we have
3 had in the state all of them have been competent lawyers
4 and competent attorney generals.

5 THE CHAIRMAN: Delegate Hardwicke.

6 DELEGATE HARDWICKE: This is my final question,
7 Mr. Chairman. If you were selecting a personal lawyer to
8 represent you in an important case, do you believe that the
9 most competent man would be chosen by an elective pro-
10 cess or by some other process which would be subject to
11 your personal determination, such as your own appoint-
12 ment?

13 THE CHAIRMAN: Delegate Mason.

14 DELEGATE MASON: Well, if it were left to me
15 to select an attorney, who I would think would be most
16 competent, I probably couldn't -- you would obviously
17 have someone you thought was more competent if you selected
18 him, so I think it is subjective as to who is the most
19 competent attorney, and we can't say as a matter of fact
20 that one lawyer is that much more competent than the
21 other.

1 There are many objective factors involved in
2 this.

3 THE CHAIRMAN: Delegate Pullen.

4 DELEGATE PULLEN: Mr. Chairman, I should like
5 to ask your legal interpretation of several words that
6 I shall call attention to in this editorial, I think it
7 is from the Washington Post, an independent newspaper,
8 Monday, November 20, 1967.

9 I will not bore you with the entire article:
10 "similarly we would hope the Convention will follow
11 the path of another committee in recommending that the
12 governor appoint future comptrollers and attorneys
13 general. These two officers now popularly elected
14 have a major role in the executive branch and ought to
15 be the governor's men. "

16 DELEGATE MASON: I don't think that is susceptible
17 to a legal interpretation, Delegate Pullen.

18 THE CHAIRMAN: Delegate Pullen.

19 DELEGATE PULLEN: I will accept any kind of
20 explanation you give me.

21 THE CHAIRMAN: Delegate Mason.

1 DELEGATE MASON: Well, if he is the governor's
2 man, that is exactly what it says, precisely that. He
3 is the governor's man.

4 THE CHAIRMAN: Delegate Frederick.

5 DELEGATE FREDERICK: Delegate Mason, do you
6 think an elected attorney general who has his own reputa-
7 tion on the line would be in a better position to build
8 up a highly qualified staff than one who is appointed by
9 the governor and could quite possibly have to accept
10 some appointment, like you know, our sons need training
11 in this field, whereas his reputation would be on the
12 line?

13 Don't you think that one who is elected would
14 be in a better position to build up a highly qualified
15 staff, more so than the other type?

16 THE CHAIRMAN: Delegate Mason.

17 DELEGATE MASON: Well, the elected attorney
18 general has more freedom of action in selecting his own
19 staff. It is up to the man whether he will select a
20 highly qualified staff, but he certainly has the oppor-
21 tunity more so than an appointed attorney general.

1 THE CHAIRMAN: Are there any further question.
2 of the minority spokesman?

3 (No response.)

4 If not, we can proceed to discussion.

5 Does the minority spokesman have an amendment
6 to offer?

7 DELEGATE MASON: No, sir.

8 THE CHAIRMAN: Very well. The question
9 arises on the approval of Recommendation Number 4.
10 Under the debate schedule, 20 minutes of controlled
11 time, controlled by Delegate Mason; 20 minutes controlled
12 by -- I'm sorry, I thought you said there was no amend-
13 ment.

14 DELEGATE MASON: There is an amendment.

15 THE CHAIRMAN: Will the pages please distri-
16 bute the amendment?

17 This will be Amendment Number 6.

18 For what purpose does Delegate Johnson rise?

19 DELEGATE JOHNSON: Mr. Chairman, I just wondere
20 whether or not it would be in order to ask the Chairman
21 whether or not the Chair would be disposed to perhaps,

1 rather than begin the debate and then have to interrupt
2 it, whether or not the Chair would be disposed to consider
3 the debate and the question tomorrow rather than interrupt
4 it.

5 THE CHAIRMAN: The Chair had the feeling that
6 the debate would be very, very limited. I would like
7 to have the amendment read, see if it is seconded, and
8 then I will inquire as to the length of debate.

9 Will the Clerk please read the amendment?

10 MR. QUILLEN: Amendment Number 6 to Committee
11 Report Number EB-1, by Delegate Mason.

12 "On line 26 on page 1 of the Committee Report
13 strike out the word "not"; and in line 27 after the
14 word "Constitution" add the words "as an elected official".

15 THE CHAIRMAN: Delegate Morgan.

16 DELEGATE MORGAN: Mr. Chairman, a parlia-
17 mentary inquiry.

18 THE CHAIRMAN: State the inquiry.

19 DELEGATE MORGAN: Is the second part of the
20 amendment proposed by Delegate Mason meant to add the
21 words "as an elected official" as an amendment to the

1 committee report?

2 THE CHAIRMAN: On the basis of the same ruling
3 that the Chair made with respect to Amendment No. 4, the
4 Chair would greet this as being a suggestion or proposition
5 for inclusion in the Constitution, and if the amendment
6 is offered in this form, would rule it out of order.

7 The amendment offered in the form of the first
8 clause, down to the word "not" would not be in order --
9 would be in order, would not be out of order.

10 Delegate Mason, did you hear the Chair's
11 answer to the parliamentary inquiry?

12 DELEGATE MASON: In view of the Chair's
13 ruling, then, I move that on line 26, on page 1 of the
14 committee report, strike out the word "not".

15 THE CHAIRMAN: So that we may have it before
16 us, may we consider Amendment No. 6 amended by striking
17 out everything in line 9 after the semicolon, all of
18 lines 10 and 11?

19 DELEGATE MASON: Yes, sir.

20 THE CHAIRMAN: Very well. The amendment
21 as thus modified; the Clerk will read the amendment.

1 MR. QUILLEN: Amendment Number 6 to Committee
2 Report Number EB-1 by Delegate Mason, an amendment to
3 Recommendation Number 4 in Committee Report EB-1,"on
4 line 26, on page 1 of the committee report, strike out
5 the word "not".'

6 THE CHAIRMAN: Is the amendment seconded?

7 (The amendment was seconded.)

8 THE CHAIRMAN: The amendment having been
9 seconded, the Chair would normally recognize Delegate
10 Mason, but before doing so, the Chair calls attention
11 to the fact that the debate schedule allows 70 minutes
12 of controlled and uncontrolled debate.

13 It is now nearly ten minutes of six. If
14 there is any likelihood that the debate would take any-
15 thing like that amount of time, the Chair would not
16 be disposed to begin the debate now.

17 With that in mind, the Chair would like to
18 inquire of Delegates Mason and Morgan whether they
19 think they could limit their controlled debate to five
20 minutes each. I am not suggesting that there is
21 any compulsion on you to do so. I am merely making the

1 inquiry.

2 If you do not think that is possible, the
3 Chair would be disposed to recess the matter until
4 tomorrow.

5 Delegate Morgan.

6 DELEGATE MORGAN: Mr. Chairman, I have three
7 speakers under the controlled time. I would imagine
8 they could complete their remarks within ten minutes.

9 THE CHAIRMAN: Delegate Mason.

10 DELEGATE MASON: Mr. Chairman, I have
11 several speakers, but I would cooperate and limit it to
12 an agreed time; if it was ten minute for controlled debate,
13 I would agree to that limitation.

14 THE CHAIRMAN: To what time?

15 DELEGATE MASON: Ten minutes, the same as
16 Delegate Morgan indicated.

17 THE CHAIRMAN: The Chair would like to inquire
18 how many delegates on the floor would be disposed to
19 speak on the amendment?

20 If you will just stand and then the Chair
21 will have some idea.

1 Delegate Harry Taylor.

2 DELEGATE H. TAYLOR: Mr. Chairman, I am au-
3 thorized on behalf of the delegates in the back row here
4 to say that a consensus has been reached here in the
5 back row and that debate will be futile as far as we
6 are concerned, and maybe that will help the others make
7 up their minds on how much time they are going to
8 need.

9 THE CHAIRMAN: Will the delegates who desire
10 to speak on the question simply stand so that the Chair
11 can get some idea as to how many there are.

12 The Chair recognizes Delegate Powers.

13 DELEGATE POWERS: Mr. Chairman, I move the
14 Committee of the Whole rise and report to the Convention
15 that it has not concluded its consideration of Committee
16 Report Number EB-1.

17 THE CHAIRMAN: Is there a second?

18 (The motion was seconded.)

19 THE CHAIRMAN: All in favor signify by saying
20 Aye; contrary, No. The Ayes have it. It is so
21 ordered.

1 (The mace was replaced by the Sergeant at Arms.)

2 (Whereupon, at 5:50 p.m. the Committee of the
3 Whole rose, and the Convention reconvened.)

4 THE PRESIDENT: The Convention will please
5 come to order.

6 On behalf of the Committee of the Whole, the
7 Chair reports that the Committee of the Whole has had
8 under consideration Committee Report EB-1, that it still
9 has it under consideration, and desires to sit again.

10 Are there any announcements by committee
11 chairmen?

12 Delegate Mudd.

13 DELEGATE MUDD: Mr. Chairman, may I announce
14 that the Judicial Branch Committee meeting on transitory
15 provisions previously scheduled for 9:00 tomorrow
16 morning will not be held at 9 a.m., but during the
17 luncheon recess tomorrow, instead.

18 THE CHAIRMAN: Any other announcements by
19 committee chairmen?

20 Delegate Penniman.

21 DELEGATE PENNIMAN: Mr. Chairman, I would

1 remind the members of my committee on style that we will
2 meet at 7:30 this evening.

3 THE PRESIDENT: Any other announcements?

4 Delegate Morgan.

5 DELEGATE MORGAN: Mr. President, it will be
6 necessary for the committee on the Executive Branch to
7 meet at 9 a.m. tomorrow morning to consider committee
8 amendments to the Executive Branch Article, made neces-
9 sary by the amendments that were adopted today to the
10 Executive Branch report of the committee.

11 THE PRESIDENT: Are there any further announce-
12 ments by committee chairmen?

13 The Chair recognizes Delegate Della.

14 DELEGATE DELLA: Mr. President, the legislative
15 branch will meet at 9:15 tomorrow morning.

16 THE PRESIDENT: Any other announcements by
17 committee chairmen?

18 (No response.)

19 Any other announcements by any other delegates?

20 Delegate Bard.

21 DELEGATE BARD: Mr. Chairman, I should like

1 to announce that the Chairman of the legislative branch
2 committee is being honored tonight and being given the
3 Brotherhood Award by the National Conference of Christians
4 and Jews. This is indeed a very great honor for a
5 delegate to this Convention. (Applause.)

6 THE PRESIDENT: Any other announcements?

7 (No response.)

8 THE PRESIDENT: The Chair recognizes Delegate
9 Powers.

10 Any delegates not present at roll call this
11 afternoon desire to indicate their presence now may
12 do so on supplemental roll call.

13 The Clerk will record the supplemental roll
14 call.

15 DELEGATE POWERS: Mr. President, I move we
16 adjourn until 10:00 tomorrow morning.

17 THE PRESIDENT: Before putting the motion, the
18 Chair desires to remind you that tomorrow is Wednesday,
19 and in accordance with the announcements you will have
20 a long day ahead of you, with an evening session tomorrow.

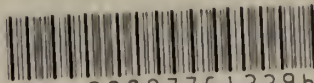
21 All in favor signify by saying Aye; contrary,

1 No. The Ayes have it. It is so ordered.

2 (Whereupon, at 5:55 p.m. the Convention
3 was recessed, to reconvene at 10:00 a.m., Wednesday,
4 November 29, 1967.)
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